Key risks – knowing what they are and how they can be managed

Risk management is an essential element of governance. As such, organisations need to be aware of the type of and source of key risks that will affect them.

This resource includes a broad category of risks that are inherent in your organisation’s operations. It also provides guidance in terms of the controls that can be put in place to manage risks such as self-assessment questionnaires, policy and procedural development, checklists of requirements, training, etc.

This resource deals with the following categories/sources of risk:
- Governance
- Legal
- Financial
- Contract management and probity
- Human resource
- Member and child protection
- Sports integrity
- Compliance
- Social media
- Insurance.

There is no one risk management solution that will work for every organisation. As this list of risks is not exhaustive, each organisation will need to develop a customised solution that meets its particular needs and circumstances.

This means you will need to ensure that your organisation considers any other relevant category of risk and manages those risks appropriately.

**Governance**

*What is governance?*

Governance is the system through which organisations are directed and managed. The purpose of governance is to ensure that an organisation manages its resources to good effect for both members and stakeholders.

This resource aims to provide you with a basic understanding of the minimum governance standards so that you can properly manage the affairs of your organisation and manage associated risks.

For more in-depth information, refer to the:
- Office for Recreation and Sport’s Governance publication

In general, governance concerns three key issues:

1. How an organisation formulates its strategic goals and directions.
2. How the board monitors the performance of the organisation to make sure it reaches these strategic goals and establishes ‘rules’ to ensure that it complies with its legal and regulatory operations.
3. Ensuring that the board acts in the best interests of the organisation as a whole and has the capacity to undertake the above.

In general, governance concerns four key elements:

1. How an organisation develops strategic direction and goals
2. How a board monitors the performance of its organisation to ensure it achieves these strategic goals
3. Effective systems in place to comply with legal and regulatory obligations.
4. How a board ensures that it acts in the best interests of the organisation’s members.

In addition to these elements, good governance is also accountable, transparent, responsive and ultimately responsible to the membership. This means that the board of your organisation has an obligation to report, explain and be accountable for the consequences of decisions that are made. In addition, others (including members, staff/volunteers and the ORS, for example) should be able to clearly follow and understand how decisions are made in your organisation.

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Finally, your organisation (and the board of your organisation) is ultimately responsible to its members. The actions of the organisation and the board should always try to serve the entire membership and balance interests in a timely, appropriate and responsive manner.  

### Why is governance important?

Governance has become a key focus for sporting organisations in recent years. In particular, the release of the Australia Sports Commission’s (ASC) high performance strategy – Australia’s Winning Edge – highlighted the importance of good governance to promote success and minimise risk within sporting organisations. Good governance allows for a number of key benefits to your organisation including:

- **Better management** - Good governance tends to encourage better and more efficiently managed clubs or associations.
- **Improved communication** – Clubs or associations that are well run tend to have better informed employees, members and volunteers.
- **Greater confidence** – Members and other stakeholders are more likely to have confidence in a club or association where decisions are made in a transparent and accountable way. This increased confidence may also extend to sponsors and insurers who are likely to have higher regard for a well-run club or association.
- **Growth and sustainability** – Good strategic and business planning and the implementation of sound policies and procedures help to sustain and grow an organisation.
- **Enhanced reputation** - Through satisfied members, the profile and reputation of your club or association can be raised.
- **Risk management** – Good governance provides a framework to ensure that your club or association meets its legal obligations, manages its risks and ensures appropriate accountability throughout the organisation.

The following section provides a summary of governance essentials you need to consider. They are presented under sub-headings for ease of use.

#### Key point:
*the majority of these concepts will apply to your organisation, irrespective of its size.*

### Board Composition and Behaviour

#### The board

Every club or association should have a board whose primary role it is to govern the organisation and oversee its strategic direction. The board’s primary responsibility is to direct and hold in trust your organisation on behalf of the members and stakeholders and to ensure that your club or association (the legal entity) remains viable and effective in the present and for the future.

More specifically, the role of the board usually involves a number of key elements such as:

- Determining, reviewing and maintaining the vision, purpose and values of the organisation
- Approval of short- and long-term strategies
- Ensuring that expenditure is guided by setting and approving annual budgets
- Determining how expenditure is approved including setting pre-determined limits for approval outside of the board
- Appointment, performance evaluation and (if necessary) the termination of the CEO (if applicable) or other senior management
- Risk oversight
- Checking and ensuring the integrity of external reports (financial and non-financial)
- Any other monitoring activities as required
- Supporting effective engagement with the membership and other key stakeholder (e.g. the ORS)
- Enhancing the public profile and reputation of the organisation.

9 Please note that for ease of reference, the terms ‘board’, ‘board member’ or ‘director’ and ‘chair’ will be used throughout this section; however, your organisation may use other terms to describe these roles. These may include ‘committee’, ‘commission’, ‘council’, ‘committee members’ and ‘councillors’.

Key risks – knowing what they are and how they can be managed cont.

For more information regarding the role and key responsibilities of the board, visit the Australian Institute of Company Directors – Roles and Responsibilities\(^{11}\) website.

**Board members**

Board members should be elected by the members and reflect the diversity of the community. Ideally, this means that your board should bring together individuals from a wide range of backgrounds, different experiences and expertise, may be culturally diverse and, ideally achieving gender balance.

This will provide your board with greater capacity to respond to the diverse needs and concerns of members and stakeholders, encouraging healthy debate and helping to ensure that a range of views are represented at board level.

> ‘A board needs to have the right group of people, having particular regard to each individual’s background, skills and experience, and how the addition of an individual builds the collective capability and effective functioning of the board.’

(AICD - Good Governance Principles for NFP Organisations)

Consideration might also be given to appointing independent members to your board, if your constitution allows for this.

For more information regarding board composition and the right mix of skills, knowledge and experience for your board, visit the Australian Institute of Company Directors – Board Composition\(^{12}\) website.

It is important for new Board and Committee members to know about the workings of the organisation and their responsibilities as a Board or Committee member. It is good practice to provide a structured, comprehensive and practical orientation to the activities, policies and structure of the organisation.

The Office for Recreation and Sport has developed comprehensive *Induction Essentials Packs* to assist organisations to induct new board or committee members.

**Size of the board**

Your constitution should specify a maximum or actual board size. However, if there is no prescribed size, it may be sensible for smaller organisations to start with a small board (e.g. four to five board members), which can grow as necessary. As a rule of thumb, a board should be small enough to have high quality and active discussions, but large enough to provide the skills and experience necessary for it to operate efficiently. Formation and use of Committees can activate operational aspects of the organisation.

Continual assessment and board renewal may assist your board in determining where any gaps in relation to skills and experience may exist. If and when these become apparent, it may be appropriate to make changes to the board.

**Chair**

The chair should be elected by the board. The chair is the chair of the board, not the chair of the organisation. In some clubs or associations, the president may also be the chair; however, it is the responsibility of your board as a whole to provide leadership to your club or association.

The chair should facilitate discussion among and provide leadership to the board. In addition, the chair may also serve as an interface between the board and the CEO (if applicable) or other management.


Key risks – knowing what they are and how they can be managed cont.

**Board meetings**

The board should hold regular meetings to monitor the performance of your club or association, formulate policy and discuss any matters brought to the board’s attention. These meetings should be well-attended by appropriate personnel (i.e. the board members and CEO, if applicable). Board meetings should primarily focus on the ‘big picture’ issues affecting the organisation such as strategic direction, policy making and review, progress towards goals and KPIs and the financial health of the organisation.

Ideally, the board should not concern itself with issues related to the day-to-day running of the club or association. These issues should be the concern of management or, where this is not possible, should be delegated to an appropriate sub-committee (see below).

The board should meet as often as is required to carry out its governance duties. Typically, this may be every month or every second month. Board meetings should take as long as is required to carry out the board’s governance responsibilities; however, most efficient and effective meetings run no longer than two hours.

For more information about running effective board meetings, refer to the Australian Institute of Company Directors – Board Effectiveness13 website.

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**Board papers**

Board papers should be distributed at least one week prior to the scheduled board meeting so that directors have sufficient time to read them and consider any issues raised.

A typical set of board papers will consist of:

- A cover page with the date, place and time of the meeting
- An agenda
- The minutes of the previous meeting
- Major correspondence issued and received by the organisation
- The CEO’s report, if applicable (for sporting and recreation organisations, reports might be submitted by the chair of a committee for example)
- Financial reports
- Operational updates
- Documents supporting submissions that need decisions
- An action list.

In terms of best practice, it is also suggested that the agenda item is clearly referenced on each paper and that agenda items and papers should be marked as ‘For decision’ or ‘For information’.

**Committees**

A board may appoint committees to help manage its workload. Committees may focus on specific areas to allow the board to concentrate on broader and strategic ‘big picture’ issues and directions. The work of these committees should be strongly linked to the strategic direction of your organisation. Examples of committees a board may form include:

- Finance and audit
- Marketing
- Sponsorship or fundraising
- Special projects.
Key risks – knowing what they are and how they can be managed cont.

The board should approve the establishment of a committee, its terms of reference (outlining roles and responsibilities) and any delegation of authority provided to the committee.

The operations of a committee are dependent on the size and structure of the organisation. In most circumstances if an organisation has a management structure which consists of employees operational committees can report directly to management. If an organisation is run solely by volunteers the chair of the operational committee can report to the board. The minutes of all sub-committee meetings should also be circulated to members of the board.

Key Principles 2.3 in the Office for Recreation and Sport Governance Principles for SA State Sport Organisations advocates that the board should establish an audit committee (often referred to as the finance and audit committee) and that its role be set out by formal charter/terms of reference:

- The existence of an audit committee is recognised as an important feature of good corporate governance.
- The committee should be structured with at least three people who are financially literate, and include at least one who has financial expertise (that is, a qualified accountant). The audit committee will comprise persons who are not directly involved in the management of the organisation; however, the chief executive officer and chief financial officer or equivalent to have standing invitations to attend meetings to provide clarification where necessary.
- The chair of the audit committee should be independent from the chair of the board;
- The audit committee should take prime responsibility for, but not be limited to:
  - Reviewing the organisation’s annual financial accounts and recommending them to the board for approval
  - Overseeing the relationship, appointment and work of external and internal auditors
  - Reviewing compliance-related matters
  - Overseeing the organisation’s risk management framework
  - Regularly reviewing the organisation’s ongoing financial accounts, systems and delegations.

Conflicts of interest

All board members should be independent, that is:

- They should not be employed by or have a significant business relationship with the organisation (e.g. a major supplier to the organisation)
- They should not hold any other material office within the organisation or hold a material conflict of interest as a result of being appointed to the board.
- It is recommended that they not be appointed to represent any constituent body (e.g. a particular team or affiliated club)

Board members and others holding official positions within your organisation must avoid actual or perceived conflicts of interest. This means that the organisation should be put ahead of any individual interests.

Any actual or perceived interests that may present a conflict should be declared and recorded in the minutes and, where it exists, a conflicts of interest register. If a conflict arises, the member should not vote on the matter and ideally should leave the meeting while the matter is being discussed. These actions aim to protect both the member and your organisation.
Key Documents

**Constitution**

A constitution is a written document that governs the objects of your organisation, its membership and how decisions will be made. Having a constitution is important because it ensures that members and stakeholders are clear about how things are done within the organisation. It can also be used as a point of reference to help resolve any problems or controversies that may arise.

A constitution should include the following sections:

- Interpretation — objects and powers
- Members — membership and meetings of members (general meetings)
- Defining who is eligible to vote at meetings
- The board — powers, other roles (chief executive officer and secretary)
- Meetings of the board
- Accounts
- Auditors
- Winding up.

Constitutions should be written in an unambiguous and succinct manner and should not include items that would better fit within a club’s or association’s by-laws or policies.

The Office for Recreation and Sport provides templates and more information regarding drafting your constitution.\(^{14}\)

**Position descriptions**

Board member position descriptions support the board and individuals to minimise risks, conflicts and uncertainty around roles and responsibilities. Position descriptions help to ensure that key positions within the governance structure of the club or association are documented and well understood. Your organisation should have position descriptions for the following roles:

- Chair
- Board members
- Public officer\(^ {15}\)
- Chairs of sub-committees
- Chief executive officer (if applicable).

These position descriptions should clarify expected roles and responsibilities, required skills as well as how many hours per week the member would be expected to dedicate to the role. For more information about drafting position descriptions, refer to the Institute of Community Directors Australia website


**Board charter and Committee terms of reference**

Ideally, your organisation should have a documented charter or term of reference for the board and each a terms of reference for each of the board’s committees. These documents should set out the principles governing the board and each committee and their functions and responsibilities.

An example of a board charter can be found at the Institute of Community Directors Australia website


For an example of a terms of reference for a finance sub-committee visit the DIY Committee Guide – Terms of Reference\(^ {16}\) website.


\(^{15}\) More information about this role can be found on the Consumer and Business Services website, www.cbs.sa.gov.au

\(^{16}\) [http://www.diycommitteeguide.org/resource/terms-reference-finance-sub-committee](http://www.diycommitteeguide.org/resource/terms-reference-finance-sub-committee)
Key risks – knowing what they are and how they can be managed cont.

Maintaining meeting records

Your organisation is required to keep a record of all board meetings that are held. Meeting minutes should outline who attended the meeting, topics for discussion and decisions made. Maintaining accurate meeting minutes assists the board to ensure that they are upholding their duty to operate in a transparent fashion as well as meeting legal requirements. They also record how decisions within your organisation have been made.

It is the content, rather than the form, of the meeting minutes that is most important. However, a number of conventions for recording meeting minutes do exist.

Board meeting minutes are required to be kept securely. These meeting minutes are the domain of the board, they do not need to be released to the members. The board may decide to release an overview of decisions or discussions to notify members of actions of the board.

For more information regarding the format of meeting minutes, refer to the Governance Institute of Australia website.17

Tools to Assist with Monitoring and Oversight

**Note:** Some of these tools are also discussed in other sections of the resource.

The degree of complexity and level of detail you assign to these tools will be in part driven by the size and complexity of your organisation

Strategic planning framework

Setting the strategic direction of the organisation is the responsibility of the board, they may delegate some activities to the management, but the ultimate authority sits with the board. It is recommended that the process used to develop the strategic plan involves consultation with and input from stakeholders, members and affiliates and other interested parties. This is important to ensure strategies address the most pressing issues within a sport. Involving members and stakeholders in the process encourages ownership and investment in the achievement of the desired outcomes.

The board must be meaningfully involved in the strategic planning process and ensure that appropriate performance indicators are included in the plan for performance to be measured against.

Your board should regularly review the strategic priorities to ensure that your organisation maintains focus on these key priorities. You should also consult with members and other stakeholders throughout the strategic-planning process. This helps to ensure that future strategies address the most pressing issues for your club or association.

Reporting the progress towards and achievement of key milestones within the strategic plan to the members and other stakeholders can be a great way to demonstrate successes of the organisation.

For more information to assist you in developing your organisation’s strategic plan, refer to the Recreation and Sport Strategic Planning Guide.18

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Policies

The board is responsible for endorsing high-level policy documents that establish your organisation’s framework for quality, safety, risk and operations. These should include occupational health and safety policies, which are now mandated by legislation. However, they can also include appropriate provisions for quality of service, financial processes and other legal risks. Within your organisation, there should be two levels of policy making: board-level policy and operational policy.

Board-level policy should include:
- Strategic policies defining the outcomes sought from all operational efforts
- Governing process policies defining the board’s own operating practices
- Board/chief executive (or management) relationship policies defining the nature of the board’s relationship with the CEO or other management (as applicable).

Example policy documents include:
- A board charter (explaining roles and responsibilities)
- Conflict of interest policy
- Code of ethics and proper practice policy
- Board professional development policy
- Induction of new board members policy.
- Operational limitations policies that define the limits of the CEO or other management’s freedom to act. For example, a policy relating to delegated authority of officers of the organisation

Resources to assist you to develop some of these policies can be found on the Institute of Community Directors Australia – Policy Bank19 website.

Operational policies in the sport environment include those pertaining to Member Protection, Child Protection and Hot Weather. As sport operates in a federated system, it is recommended to ensure that policies are aligned to those of any body you are affiliated with.

For sport policies, visit the Office for Recreation and Sport website.

Risk register and risk management framework

Organisations should develop a risk management plan or establish a risk register that is appropriately and regularly reviewed which identifies risks, the likelihood of a risk, the controls to minimise the risks and who is responsible for oversight.

This should be in the context of a framework that sets out the processes by which risks will be managed, by whom and when reporting should be made to the board. Ideally these documents will categorise risks as either strategic or operational.

Refer to the section titled Risk Management Process for additional information.

Financial reporting

The directors of your organisation (i.e. members of the board) are ultimately responsible for the financial health of the organisation. As such, board members have a responsibility to ensure that they are informed of and understand the organisation’s finances. To achieve this, the board should receive timely and accurate financial statements that comprise:

- Profit and loss statements
- Balance sheets
- Cash-flow statements
- Budget versus actual reports on a monthly and year-to-date basis as well as identifying the full year budget
- Written reports regarding material variances from the budget
- Listings of all major outstanding debtors and creditors
- Bank reconciliations (including bank account evidence).

The board should also receive performance reporting against your organisation’s strategic objectives so that you can monitor this performance on an ongoing basis. It is critical that all directors understand and take their financial responsibility on the board seriously by ensuring they are able to comprehend and challenge the financial information presented to them by management.

A board should possess detailed knowledge of the financial health of its organisation, as it is illegal for an organisation to trade while insolvent\(^2\) and the directors could be held personally responsible. Not being aware of financial issues within your organisation is not an excuse. If, as a board member, you don’t receive adequate information or don’t understand the information you are given, make sure that you ask for clarification. Ultimately, it is your responsibility to ensure you are informed.

For more information regarding board members’ legal liabilities, refer to the Institute of Community Directors Australia website.


**Performance management**

As mentioned previously, one of the key aspects of good governance is adequate monitoring of performance. This should include financial and non-financial monitoring, the purpose of which is to ensure that your club or association is performing to the standards required.

It is essential that any performance indicators that may be established are clear and concise and can actually be measured. These indicators should also be aligned to your club’s or association’s strategic objectives (remember, ‘what gets measured gets done’) and comprise both lead and lag indicators\(^2\). The board may receive monitoring information from a number of different sources, including:

- Internal reports, e.g. CEO reports (if applicable), sub-committee reports
- External reports, e.g. an external auditor or contractor
- The board’s own observations, investigations or evaluation.

In addition to measuring the performance of your club or association, it is the job of the board to undertake performance reviews of the CEO or other key senior management (as applicable) to evaluate their effectiveness. Criteria that you might use to evaluate the CEO or other management may include their achievements against KPIs\(^2\), compliance with board directives and the proper use of delegated authority.

It is recommended that the board review its own performance on a yearly basis, at least. The purpose of this is to encourage self-review and continuous improvement. The outcome of the evaluation process is the basis for board and individual board member development goals leading to an improvement in board performance in time.

Practicing good governance and displaying the appropriate level of diligence in the way that your club or association manages its activities and affairs contributes to sound risk management.

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\(^2\) A lagging indicator is one that is ‘output’ oriented and measures an event that has already happened, e.g. membership numbers. A leading indicator on the other hand is predictive and may drive the performance of the lagging indicator, e.g. membership satisfaction.

\(^2\) KPIs or Key Performance Indicators are quantifiable measures (i.e. objectively measurable) developed and agreed upon by the board and management that reflect the critical success factors of an organisation.
Key risks – knowing what they are and how they can be managed cont.

Governance – Summary of Key Requirements

The information within this resource provides you with an understanding of the key issues that you need to be aware of in order to ensure that your organisation effectively manages its resources for the benefit of members and stakeholders.

Listed below is a high-level summary of key requirements for small and large organisations:

• The majority of board members are elected by the members of the organisation (also refer to requirements as specified by your constitution).
• The organisation has an unambiguous constitution.
• The position of chair of the board is elected by the board or by the process specified by the constitution.
• The organisation holds regular board meetings.
• The board papers are distributed at least one week before the scheduled meeting date.
• The board is supported by a range of sub-committees (optional for smaller organisations)
• The governance structure maximises the ability of the board members to make independent decisions
• Board member position descriptions exist.
• Board meeting minutes are recorded and securely stored
• The organisation has documented strategic priorities, goals and performance measures.
• The board endorses all high-level policies of the organisation.
• The board has a risk register in place and regularly reviews and monitors those risks.
• The board has a detailed understanding of the organisation’s financial health.
• The board undertakes performance reviews of the CEO or other key paid management positions.
• The board reviews its own performance on an annual basis.

Governance - Useful Websites and Other Resources

For more information regarding governance, please refer to the following resources:

Governance
• Office for Recreation and Sport
• Australian Sports Commission (ASC)
• Australian Institute of Company Directors (AICD)
• ‘Good Governance Principles and Guidance for NFP Organisations’
• Department of Premier and Cabinet – Boards and Committees
• Governance Institute of Australia - Board Review
• Australian Institute of Company Directors - Financial and non-financial performance indicators

Templates
• Performance review templates

Policies
• Institute of Community Directors

Training and development
• Australian Institute of Company Directors (AICD)
• Volunteering SA and NT
Key risks – knowing what they are and how they can be managed cont.

Legal

Legal Terms, Key Concepts and Legislation

A basic guide to legal terms, concepts and new legislation.

The law comes from legislation (statutes and by-laws) created in federal and state parliaments and also from judges’ decisions in courts (the ‘common law’). The laws that apply, state or federal, depend upon the subject matter involved.

State legislation, for example, impacts fundraising and gaming practices, occupational health, safety and welfare and equal opportunity.

Federal legislation is responsible for such things as taxation and trade practices laws.

Overlapping state and federal legislation, such as employment law, govern some areas. In addition, there is a wealth of law contained in administrative regulations drawn up to assist the implementation of legislation.

The sport and recreation industry covers a wide range of organisations. The legal framework under which you operate will determine your legal obligations. For example, incorporated associations are less highly regulated than companies limited by guarantee.

In addition, requirements will vary across states and territories for organisations with the same legal structure. You will need to check the state and territory act (law) relevant to your organisation to determine your responsibilities. It will usually cover things such as constitutions, number of meetings per year, record keeping and auditing of accounts.

People involved in recreation and sport activities as administrators, volunteers or participants are unlikely to be aware of the full array of legislation and rules. Ignorance of the existence of a prohibition or regulation is usually not a defence. One of the crucial aspects of legislation is that when a provision is breached, a set penalty is incurred, which, unlike civil law, may involve a fine or a term of imprisonment. Legal issues are not always quickly resolved and can have far-reaching ramifications.

How do you find legislation? Most legislation is accessible on the Australasian Legal Information Institute\(^23\) website (if you know the name of the Act) or on the South Australian Legislation\(^24\) website.

To locate particular legislation in the statute books, you need to know the name of the act and the year it was passed.

Acts are often updated or repealed, changing parts of the legislation. Therefore, you need to ensure that what you are reading has been updated to include subsequent amendments.

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\(^{23}\) http://www.austlii.edu.au/

Key Legal Concepts

Several key legal concepts are important in risk management. They can be complex and confusing because of the language used and how they affect each other. This section tries to provide a basic understanding of each concept.

Negligence

Negligence occurs when a person is harmed unintentionally by someone due to carelessness. It is the failure to use reasonable care and skill in a given situation. In order for a negligence claim to be successful, four things need to be established:

1. A duty to take reasonable care was owed to the injured person.
2. There was a breach of that duty of care.
3. Injury or other damage was sustained.
4. There was a reasonable causal connection between the breach of duty of care and the injury or damage sustained.

These four factors must be satisfied to establish that a person was negligent. Courts will consider the gravity of the risk of injury or damage, the likelihood of it occurring and the costs involved in avoiding that injury or damage. The courts may award compensation (‘damages’) arising out of a suit alleging negligence.

What is duty of care?

There is a general expectation that everyone is responsible for taking reasonable care not to harm others. In law this is known as the ‘duty of care’. This concept is based on the idea of looking after your neighbour. In law, you owe a duty of care to a person only if you can reasonably foresee that your conduct may be likely to cause loss or damage to that person or a class of persons to which the injured person belongs.

Namely, there needs to be a reasonably close connection between the conduct giving rise to the breach of duty and the injury or damage caused. If you are responsible for making decisions or taking action that ensures other people are not harmed, you owe a duty of care to those individuals.

To determine the scope of the duty of care and whether there has been a breach of that duty, the following factors are considered:

- **Foreseeability** - This refers to the possibility of harm occurring that is reasonably foreseeable and not too remote. Could a person reasonably foresee that there is a real risk that someone could be harmed? For example, it is reasonably foreseeable that if a coach takes players on a run in 40-degree heat that there is a risk of dehydration. Some risks may still be reasonably foreseeable even if they are extremely unlikely or rare (like being bitten by a shark while surfing).

- **Proximity** - This concept relates to the nature of the relationship between the person who owes a duty of care and the person to whom they owe that duty. There must be a sufficient relationship of closeness (referred to as ‘proximity’) between the two people in order for a duty of care to exist. The degree of proximity can vary considerably depending on the circumstances. For example, a lifeguard would have greater proximity when on duty than when off duty.

- **Standard of care** - In order to determine whether a duty of care has been breached, the standard of care that is expected in the circumstances will be assessed. Where a person has acted in an unreasonable way or their actions fell below the standard of care expected, they will have breached their duty of care.

The standard of care required is based on what a reasonable person would have done (or not done) in similar circumstances. It will also vary according to the person involved. For instance, the duty of care owed by someone such as a coach would be based on what a reasonable coach, with similar experience, would do in similar circumstances.
Key risks – knowing what they are and how they can be managed cont.

The standard of care required would also be higher for someone who is less able to look after themselves (less skilled, unfit, injured, children, etc.). Industry standards and organisation documents such as codes of practice and/or behaviour may all be used to determine the standard of care required.

- **Voluntary assumption of risk** - The main defence to a negligence claim as a result of sport and recreation activities is ‘volenti non fit injuria’ or the voluntary assumption of risk. The duty of care that is owed can be completely removed if the harmed person had full knowledge of the risk of injury to themselves and had voluntarily assumed the risk of the actual act that caused the harm.

  For example, if an ice hockey player had voluntarily and completely assumed the risk of physical harm within the rules of the game, he or she cannot complain when injured while playing that game.

- **Contributory negligence** - Harmed persons who have compounded the harm by failing to exercise reasonable care for themselves may have contributed to some of the loss suffered. As a result, any damages will be reduced in proportion to the extent to which their actions contributed. Say a mountain bike rider is injured after colliding with another rider during a race. The rider had a blood alcohol of more than 0.15, which would have impaired his ability to judge speed and distance and, as a result, the collision occurred. His ability to claim damages against the race organisers could be reduced considerably.

- **Vicarious liability** - In some circumstances an organisation may be liable for the conduct of others. For example, an organisation may be directly responsible for the conduct of its officials or employees. A club can be held responsible for liability arising out of a coach’s instructions or behaviour.

**Exemption clauses and waivers**

No waiver or exemption clause is a fool-proof way to avoid litigation. Obviously, preventing injury in the first place is preferable, but a carefully worded waiver that is distributed and explained to all affected can strengthen your defence in the event of a claim. In some circumstances, the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth)) prohibits the exclusion of some terms, which it includes in all consumer contracts for consumer protection. Seek legal advice to make sure you get the wording right and that you meet the technical requirements to ensure the document can be enforceable.

You need to be able to convince someone else, somewhere else, at some other time that the person that undertook the activity actually understood the risks involved. For example, in Formula One racing they video the reading and signing of the waiver with the drivers. These waivers are very specific and detailed and they outline all possible risks. In the sport and recreation industry, it is important not to opt for a brief, generic waiver.

Recreation service providers, like other service providers, are subject to the implied warranties under the Australian Consumer Law that services will be provided with due care of skill and are reasonably fit for purpose. The Recreational Services (Limitation of Liability) Act 2002 (SA), which allowed recreational service providers to limit their liability in relation to personal injury by registering and subscribing to a safety code, was repealed on 1 January 2011. Both the Competition and Consumer Act 2010 (Cth) and the Fair Trading Act 1987 (SA) allow recreation service providers to exclude, restrict or modify the implied warranties under the Australian Consumer Law in order to limit their liability for personal injury suffered by consumers. However, recreational service providers will not be able to limit their liability in circumstances where their conduct was reckless.

Waivers can still be used by recreational service providers to limit liability for property damage and other things that are not directly related to participation in the recreational or sport activity. For example, a waiver is appropriate for property loss and travel to an event that has been arranged by the club or association.
Key risks – knowing what they are and how they can be managed cont.

The Consumer and Business Services website\(^{25}\) provides detail about limiting your liability, together with the necessary actions for an effective waiver, including the requirement for the consumer to complete the form (i.e. sign and date).

An additional example includes the paragraphs contained in the terms and conditions\(^{26}\) of the popular City to Bay Fun Run. Participants are required to sign a form to demonstrate that they agree and abide by the terms and conditions of the competition, thus acting as a waiver of liability for the organiser and event sponsors.

It is important to remember that while a good release or waiver has value for defence from civil action in the event of a claim, you should never rely on it in lieu of other measures and risk management procedures.

**Legal status and corporate liability**

Incorporation gives a club or organisation legal status, which means that the club or organisation is able to sue and be sued in its own name. Once incorporated, it will be the club itself that will have to satisfy any claim or liability so long as the members have acted properly and within their authority.

‘Officers’ – committee members, secretaries, treasurers, public officers and managerial employees – of incorporated bodies are now faced with similar responsibilities to directors and other officers of corporations governed by the due care and diligence sections of the Corporations Act 2001 (Cth) even if they are voluntary and unpaid officers.

For a fact sheet on incorporation visit the Office for Volunteers\(^{27}\) website.

The sheet highlights some of the advantages of being incorporated and some of the responsibilities of an incorporated association.

**Due diligence**

To limit liability, directors and officers of an organisation need to demonstrate that they took the necessary steps to prevent a reasonably foreseeable loss or injury from occurring. The concept of due diligence comes from company law.

Essentially, due diligence means that a director or officer of an organisation should:

- Act in good faith and for a proper purpose
- Not have a material interest
- Reasonably inform themselves
- Consider their decision in light of the best interests of the organisation.

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Key legislation and regulations

**Good Samaritans**

Under the Civil Liability Act 1936 (SA) (as amended), an individual who provides assistance, advice or care to another person in an emergency, where there is no expectation of payment by money or other means, will not be able to be sued for any injury or harm he/she causes if acting in good faith without recklessness (provided the good Samaritan’s ability was not significantly impaired by alcohol or drugs).

**Volunteer protection**

Many sport and recreation organisations rely heavily on volunteers to keep their operations viable. The Volunteers Protection Act 2001 (SA) was introduced in South Australia to protect volunteers from being personally liable to pay compensation for negligent actions arising out of authorised activities of the volunteer, which may have unintentionally caused personal injury, property damage or financial loss. The Act is designed to limit personal liability of volunteers, except for liability for defamation or if the volunteer was impaired by recreational drug use or if the volunteer was acting outside the scope of the authorised activities or contrary to instructions.

While the Act benefits volunteers, it subjects the organisations to the risks of liability for the acts of the volunteer. Organisations will need to make sure that volunteer roles and responsibilities are clearly defined and that those acting in these roles have the required training and experience to fulfil their duties.

**Privacy**

While organisations with a turnover of $3 million or less are exempt under the Privacy Act, this exemption does not apply if you disclose the personal information of your members to a state or national body in return for a benefit or service from that organisation or sponsor. This means that the vast majority of sport and recreation organisations will need to comply with the Privacy Act.

**What’s changed?**

The Privacy Amendment (Enhancing Privacy Protection) Act 2012 commenced on 12 March 2014 and resulted in many significant changes to the Privacy Act 1988. The Privacy Regulation 2013, made under the Privacy Act, also commenced on that date. The Act now includes 13 privacy principles that replaced the Information Privacy Principles (IPPs) and the National Privacy Principles (NPPs). These principles regulate the handling of personal information.


### APP 1 — Open and transparent management of personal information

Ensures that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up-to-date APP privacy policy.

### APP 2 — Anonymity and pseudonymity

Requires APP entities to give individuals the option of not identifying themselves or of using a pseudonym. Limited exceptions apply.

### APP 3 — Collection of solicited personal information

Outlines when an APP entity can collect personal information that is solicited. It applies higher standards to the collection of ‘sensitive’ information.

### APP 4 — Dealing with unsolicited personal information

Outlines how APP entities must deal with unsolicited personal information.

### APP 5 — Notification of the collection of personal information

Outlines when and in what circumstances an APP entity that collects personal information must notify an individual of certain matters.

### APP 6 — Use or disclosure of personal information

Outlines the circumstances in which an APP entity may use or disclose personal information that it holds.
APP 7 — Direct marketing
An organisation may only use or disclose personal information for direct marketing purposes if certain conditions are met.

APP 8 — Cross-border disclosure of personal information
Outlines the steps an APP entity must take to protect personal information before it is disclosed overseas.

APP 9 — Adoption, use or disclosure of government-related identifiers
Outlines the limited circumstances when an organisation may adopt a government-related identifier of an individual as its own identifier or use or disclose a government-related identifier of an individual.

APP 10 — Quality of personal information
An APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

APP 11 — Security of personal information
An APP entity must take reasonable steps to protect personal information it holds from misuse, interference and loss and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.

APP 12 — Access to personal information
Outlines an APP entity’s obligations when an individual requests to be given access to personal information held about them by the entity. This includes a requirement to provide access unless a specific exception applies.

APP 13 — Correction of personal information
Outlines an APP entity’s obligations in relation to correcting the personal information it holds about individuals.

Responding to the privacy legislation and recent changes
- Become familiar with the APPs and the requirements of the Act. For further information, refer to the Office of the Australian Information Commissioner (OAIC).
- Review the way you collect, hold, use and disclose personal information and make the appropriate changes to ensure you meet the APPs.
- As a priority, ensure you develop a privacy policy as part of your overall risk management strategy.

As a matter of good practice, regardless of whether or not the new provisions apply to your organisation, consider reviewing the checklist compiled by the OAIC to help understand the main changes that need to be made by organisations.

Discrimination and harassment
In recent times, there have been a number of high-profile cases of individuals and organisations in the courts for breaches of anti-discrimination laws. Discrimination is covered by both state and federal legislation.

The Equal Opportunity Act 1984 (SA) (proclaimed in March of 1986) consolidated all of the anti-discrimination legislation that applied to that date in South Australia.

This Act deals with a range of discriminations (race, age, gender, marital status, sexuality, pregnancy and physical or intellectual impairment), disability (includes ‘disease-causing organisms present in the body’) in employment (including contracts and partnerships), education, provision of goods and services, accommodation, clubs and associations, advertising, conferral of qualifications, and disposal of land.

29 From 1 January 2015, the OAIC will no longer exist as a unified organisation. Its functions will be redistributed among four other government agencies. http://www.oaic.gov.au/privacy/about-privacy
Discrimination is really treating someone less favourably because of one or more of the characteristics previously mentioned. Everyone has choices about how they treat other people. Those choices can be made using real and relevant information or they can be based on prejudice, stereotypes, misinformation and bias.

The Act provides for general exemptions where the exclusion of a person may be lawful in a competitive sporting activity (i.e. where the strength, stamina or physique of the competitor is relevant to the outcome of the competition). Those exemptions arise in limited circumstances as outlined in the Act.

Some discrimination is unlawful (for example, sexual harassment and racial discrimination) and some is not (for example, coaches who show favouritism towards their children over other players). Discrimination and harassment is a critical issue for everyone involved in sport and recreation and it can be a complex area.

For example, one sporting organisation ended up in court after refusing to allow a pregnant athlete to play her sport. This is a difficult issue, especially when you consider the balance between the duty of care owed to the player and the unborn child and the probability of breaching discrimination laws. The Australian Sports Commission has issued guidelines that provide some advice on how to handle such a situation.

The following case study is taken from the Play by the Rules website:

Strength/Stamina/Physique Argument Rejected:
Emily South v Royal Victorian Bowls Association (RVBA) (2001)

Ms Emily South, a 19-year-old keen bowler, had been a member of the St Kilda Bowling Club for about seven years. The club was an affiliated member of the Royal Victorian Bowls Association (RVBA).

The RVBA conducts a Metropolitan Pennant Bowls Competition on Saturday afternoons. Ms South wanted to play on Saturday afternoons because she was unable to play in the Women’s Pennant Competition, which was a mid-week competition that clashed with her school and university commitments.

She wished to play at the highest level and her club considered her capable of competing in the Saturday afternoon RVBA competition. Only clubs affiliated with the RVBA with members affiliated to the RVBA are eligible to compete in their Saturday pennant competitions. RVBA rules stated that only male members of affiliated clubs could then affiliate as individuals with the association.

The request to register Ms South as an affiliated member was refused by the RVBA.

Ms South lodged a complaint of Sex Discrimination with the Victorian Equal Opportunity Commission.

The RVBA argued that strength, stamina and physique are involved in the playing of bowls. In particular, the drive shot, which is produced by the application of strength, is an important tactical shot that may decide the outcome of the game. Evidence was presented that men employ the drive shot more frequently than women.

However, the Tribunal found that strength, stamina and physique were not significant in bowls and that discrimination had occurred. It ordered the RVBA to amend its rules so that it did not prohibit women from registering as affiliated members and competing in the Saturday pennant bowls competition.

For further examples of court and tribunal decisions and conciliated complaints, visit the Play by the Rules website.

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32 http://www.playbytherules.net.au
Harassment

Harassment covers a wide range of behaviour’s of an offensive nature. It is commonly understood as behaviour intended to disturb or upset and it is characteristically repetitive. In the legal sense, it is intentional behaviour that is found threatening or disturbing.

The following are some examples of unfair and possibly unlawful discrimination:

• **Sex Discrimination** - Prizes of different value are given for male and female competition in the same club.

• **Racial Discrimination** - An Aboriginal player is overlooked for team selection due to his race.

• **Age Discrimination** - A club refuses to clear players to other teams if they are younger than 21.

• **Marital Status Discrimination** - A player is deliberately excluded from team activities and social functions after she divorces her husband who is a club official.

• **Pregnancy Discrimination** - A woman is dropped from her softball team when she reveals she is pregnant.

• **Sexuality Discrimination** - A footballer is ridiculed by his teammates after his homosexuality is disclosed.

• **Impairment or Disability Discrimination** - A junior player is overlooked because of her mild epilepsy.

• **Sexual Harassment** - A male tennis coach keeps putting his hand on a woman’s bottom during coaching sessions, making her feel very uncomfortable.

• **Victimisation** - A player is ostracised by her coach for complaining about his racist behaviour to another club official.

These examples are taken from the Play by the Rules website, which is supported by the Australian Sports Commission, Australian Human Rights, State and Territory Equal Opportunity and Departments for Recreation and Sport.

The Play by the Rules website combines information about legislation, frequently asked questions about discrimination and sport, as well as training and resources to support safe, fair and inclusive sport environments.

**Children’s Protection Act**

People who have a suspicion on reasonable grounds that a child has been or is at risk of being abused or neglected are mandated by the *Children’s Protection Act 1993 (SA)* to report it to the Child Abuse Report Line (13 14 78) or to the SA Police, where the suspicion is formed in the course of the person’s work or in carrying out official duties.

Recreation and sport organisations are required to have strategies in place to prevent and minimise opportunities for abuse and to respond when it occurs or is suspected. All staff and volunteers who hold a management position or work in a prescribed position for an organisation providing sporting or recreational services wholly or partly for children are mandated to report their suspicions.

The Act also requires:

• The development of policies and procedures to establish and maintain child safe environments

• All paid or volunteer persons holding a prescribed position are required to have a relevant history assessment completed before they are engaged or appointed unless an exemption applies

• Organisations to lodge, or have lodged on their behalf by a governing body, a Child Safe Environment Compliance Statement with the Department for Education and Child Development (DECD).

Refer to the section titled *Member and Child Protection* for more information and strategies.
Work Health and Safety (WHS)

Everyone has a right to be safe at work. This includes paid and volunteer workers who contribute in diverse ways to organisations. New WHS laws, which came into effect in South Australia from 1 January 2013, may mean the responsibilities and duties of your organisation have changed.

Information in this section is not intended to be read in place of the WHS laws and should be used in conjunction with South Australia’s Work Health and Safety Act (2012) and the approved WHS codes and practices. The following information is a summary of key points identified in the Safe Work Australia publication Essential Guide to Work Health and Safety for Organisations that Engage Volunteers and Australian Sports Commission’s Sporting clubs guide to a safe workplace. Some minor modifications have been made.

Each publication is a useful starting point for your organisation to gain an understanding of its work health and safety duties and responsibilities.

For more information on the duties for volunteers and volunteer organisations under the WHS laws, you can also contact South Australia’s work health and safety regulator, SafeWork SA, by phoning the Help Centre 1300 365 255 or visiting their website.

Organisations and their duties

New WHS laws require that a person conducting a business or undertaking (PCBU) must ensure, so far as is reasonably practicable, the physical and mental health and safety of its workers, including volunteers.

A PCBU does not include a ‘volunteer association’. The definition of a volunteer association for the purposes of the WHS Act is a group of volunteers working together for one or more community purposes that has no employees. A group of volunteers that employs any person to carry out work for the association is not a volunteer association, but rather a PCBU. The new WHS laws require most organisations to meet specific duties but volunteer associations – organisations that do not have any paid staff – do not have those duties.

Examples

- Mary is appointed secretary of the local sporting club. The club was established in 1962 and is operated by paid employees and volunteers. The club employs someone to manage the club’s accounts and another to manage the office on a part-time basis. As the club employs people, it has duties as a PCBU under the WHS Act. It also means that Mary has duties as a worker and officer under the WHS Act.

- John is elected secretary of the local sporting club. The club was established in 1962 and is operated by a group of volunteers. The club’s committee meets each month. Occasionally the club pays a handyman to maintain its clubrooms. The handyman isn’t employed by any members of the club. As the group of volunteers does not employ others to operate their club and they all work together for a community purpose, they are classified as a volunteer association. This means John and the sporting club do not have any duties under the WHS Act.

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Key risks – knowing what they are and how they can be managed cont.

**Key point:** If your organisation is a volunteer association and does not fall under the WHS Act, it is still a good idea to comply with general WHS duties, as general and common law duties of organisations that engage volunteers apply.

Australian courts have long recognised that volunteers are owed a general duty of care by the people and the organisations they support.

The Australian Sports Commission’s document, *Sporting clubs guide to a safe workplace*, outlines seven steps for organisations to improve health and safety in their workplace, which may be of assistance for organisations that are aiming to comply with general WHS duties. These steps are a guide only and PCBU organisations may need to implement other strategies to meet their legal WHS requirements.

**What your organisation (as a PCBU) needs to do**

If the WHS laws apply to your organisation (i.e. your organisation meets the PCBU criteria), it must ensure, so far as is reasonably practicable, the health and safety of all of its workers, including volunteers. This means that the organisation must provide the same protections to its volunteer workers as it does to its paid workers. The protection covers the physical safety and mental health of all workers, including volunteers.

This primary duty of an organisation is qualified by ‘so far as is reasonably practicable’. This means the organisation does not have to guarantee that no harm will occur, but it must do what can reasonably be done to ensure health and safety.

Other factors that will be taken into account in determining what the organisation is required to do to protect its workers, including volunteers, are:

- The type of business or undertaking.
- The type of work that the organisation performs.
- The nature of the risks associated with that work and the likelihood of injury or illness occurring.
- What can be done to eliminate or minimise those risks.
- The location or environment where the work is carried out.

The primary duty of a PCBU organisation includes ensuring, so far as is reasonably practicable:

- The provision and maintenance of a work environment without risks to health and safety.
- The provision and maintenance of safe plant and structures and safe systems of work.
- The safe use, handling and storage of plant, structures and substances.
- The provision of adequate facilities to support the welfare of workers at work, including volunteers (for example toilets and first aid facilities).
- The provision of information, training and instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from their work.
- Monitoring the health of workers and conditions at the workplace to prevent illness or injury of workers.
PCBU organisations that have work health and safety obligations will need to be quite thorough and establish a comprehensive work health and safety framework that:

- manages health and safety risks
- provides information, training and instruction to workers and volunteers
- communicates effectively and consults with its workers and volunteers, keeping them informed and involved in decisions that may affect their health and safety
- considers appointing health and safety representative(s)
- implements a policy or procedure for the reporting of incidents.

Your organisation is legally obliged to advise SafeWork SA immediately after becoming aware that a notifiable incident has occurred as a result of the conduct of the organisation.

Guidance on these essential elements of a WHS framework is provided in each of the publications referenced at the beginning of this section.

### Obligations of the volunteers in your organisation

Your organisation’s volunteers must take reasonable care for their own health and safety and ensure that their actions do not adversely affect others. They must also comply with any reasonable instructions, policies and procedures relevant to health and safety issued by their organisation as a PCBU or volunteer association.

Basically, what is reasonable care and what is expected of workers is what a reasonable person would do in circumstances, having regards to things such as:

- their knowledge
- their role
- their skills
- the resources available to them
- their qualifications
- the information that they have
- the consequences to health and safety of a failure to act in the circumstances.

### Key risks – knowing what they are and how they can be managed cont.

36 A notifiable incident is a serious incident that relates to the work the organisation carries out and involves:

- the death of a person
- the serious injury or illness of a person
- a dangerous incident.

Serious injury or illness and dangerous incidents are further defined in the Act.
Liquor licensing

If your organisation wants to sell alcohol on their premises, it must apply for a liquor licence and comply with the legal requirements and licence conditions. The licence controls the way alcohol is sold and distributed to members and their guests.

The relevant Act is the Liquor Licensing Act 1997 (SA) and the purpose of the Act is to regulate and control the sale, supply and consumption of liquor. Particular emphasis is placed on encouraging responsible attitudes towards the promotion and advertising of liquor and minimising the harm associated with liquor consumption. It is also a condition of every licence that the licensee complies with the Commissioner’s codes of practice. Failure to comply with a provision in the General Code of Practice will be a breach of licence condition. There are many licences under the Act. Your organisation will need to determine what type of licence it requires.

For example, clubs that intend to sell liquor for consumption on or off the premises may require a club licence or a limited club licence. A club licence may only be held by a club that is either a non-profit association incorporated under the Associations Incorporation Act 1985 or a company limited by guarantee under the Corporations Act 2001 of the Commonwealth.

A club licence permits the sale and supply of liquor on licensed premises to any member of the public who is not a minor. This type of licence does not allow the sale of take-away liquor unless special approval has been granted. A limited club licence permits the sale and supply of liquor on licensed premises to club members or guests of members only. A member of the club will not be permitted to have more than five guests on the club premises at any time. This type of licence does not permit the sale of take-away liquor.

A further condition of a limited club licence is that the club will keep the Commissioner informed of any changes to the composition of the committee of management of the club and will provide the information required by the Commissioner (in the form required by the Commissioner) about the members of the committee of management.

If your organisation is a holder of a limited club licence and wishes to hire out the club’s premises, it can do so under a limited licence for members who wish to hold a function and invite more than the five guests per member or non-members who are looking for a venue to hold a function. The supply of liquor during the function can be provided by the club or by the person holding the function. In either situation there are certain requirements to be met by the club.
Key risks – knowing what they are and how they can be managed cont.

Key point: If your organisation already has a liquor licence, you should, as part of your risk management strategy:

• Review the recent amendments to the Act that took effect in November 2013, December 2013 and January 2014 and understand the impact that these amendments may have on your organisation. The amendments include:

  - A new object in the Act to ensure that the sale and supply of liquor occurs in such a manner as to minimise the risk of intoxication and associated violence or anti-social behaviour (including property damage and causing personal injury). This amendment specifically addresses alcohol-related violence and property damage.

  - Amendments to section 11A of the Act, which remove any doubt about the validity of the Late Night Trading Code of Practice. These amendments provide that the Liquor and Gambling Commissioner (the Commissioner) may include in a code of practice, measures that can reasonably be considered appropriate and adapted to the furtherance of the objects of the Act.

  - An increase in the expiation fee for offensive and disorderly conduct in licensed premises or in the vicinity of licensed premises from $160 to $500.

  - An amendment to the definition of ‘entertainment’, removing the reference to television screens. Licensees will no longer have to obtain entertainment consent under section 105 of the Act for television screens (whatever the size).

  - Inclusion in the Act of a definition of intoxication, covering behaviour as a result of the consumption of liquor or some other substance.

  - Licensees and staff are no longer required to consider whether the intoxicated behaviour of a patron arises from liquor or some other drug. It is not necessary to establish one or the other.

  - The requirement for licensees to ensure that the notice to minors (minimum age) is displayed in a prominent position in each area of the licensed premises, as per the approved plan, to which access is permitted to minors by the licensee.

• Periodically review your organisation’s licence. If specific conditions have been imposed on the licence, ensure that your organisation can demonstrate that these conditions are being complied with.

For further assistance, you may wish to refer to the website of the Good Sports program of the Australian Drug Foundation.

This program has been established to assist clubs and volunteers with alcohol management.
Disclaimer

The comments on legal liability and recent legislative changes in this section of the resource and throughout the document do not purport to be a complete and accurate description of the law on these topics.

The State Government of South Australia (Office for Recreation and Sport) and its servants and agents are not by these comments providing legal advice to any person, company or organisation and make no warranties with respect thereto and to the maximum extent permitted by law disclaim all liability and responsibility for any direct or indirect loss, damage or liability that may be suffered or incurred by any person, company or organisation as a consequence of, or in reliance upon, anything contained in, implied by or admitted in this document.

Financial

Financial risk is the risk to an organisation’s cash flow. Often, financial risks are not managed effectively.

Good financial management is essential for your organisation’s survival and is an important part of financial risk management and good governance. It involves:

- being provided with and reviewing financial information on a regular basis
- effectively managing the funds of the organisation
- implementing sound financial practices and policies
- understanding the organisation’s financial position and obligations.

Good financial management and the ability to demonstrate that this is occurring is essential if your organisation is seeking additional external funding or capital assistance.

Often organisations will appoint a financial director/treasurer with accounting experience to assume this responsibility. He or she will generally be involved in day-to-day transactions or maintaining the accounts.

Notwithstanding this appointment, all board members should have an understanding of their organisation’s accounts and financial reports, as they are responsible in the eyes of the law.

If board members do not have this financial literacy, there are several courses that can be undertaken to assist with understanding the key responsibilities. Refer to the section titled Financial Management – Useful Websites and Other Resources.

Financial responsibilities

Each organisation will have specific legal obligations in relation to their financial management and an ethical responsibility to their members in respect to managing their organisation’s funds.

Corporate governance issues also need to be taken into consideration when administering an organisation’s finances. It is important that all officers of your organisation (president, club director, board member, treasurer, etc.) understand their responsibilities in this area, particularly if they are a director of the organisation in the eyes of the law.

Listed below is a summary of the key issues. For further information, it is recommended that you talk to your state sport and recreation organisation or other national sporting body and/or obtain professional advice if any aspect requires clarification or further consideration.
Key issues - duties and requirements

A. Legal responsibilities of directors regarding financial management

The legal duties of directors will vary depending on whether an organisation is incorporated pursuant to the Corporations Act or in accordance with South Australia’s Association Act.

Directors of all organisations have legal duties and responsibilities, which require that they act:

- competently
- honestly
- in good faith
- in what they consider to be the best interests of the organisation.

Common law principles that directors should follow include:

- monitoring the management and performance of the organisation
- understanding the basics of the organisation’s business, services offered and objectives
- maintaining their knowledge of the organisation’s direction and activities
- assessing the appropriateness of management’s (if applicable) business practices
- monitoring the organisation’s policies
- being conversant with the organisation’s financial status by regularly reviewing financial statements and other financial reports prepared internally and externally
- enquiring into matters where necessary.

B. Corporate governance requirements regarding financial management

Directors are also required to understand the financial needs of their organisation in relation to statutory and common-law requirements and corporate-governance issues.

In order to understand and identify the responsibilities involved in your organisation’s financial management, it is recommended that each director read through the following financial management checklist.

This checklist should be reviewed at least annually but it can be used more often according to the needs of your organisation. For example, when:

- a new director or treasurer is appointed
- in preparation for the annual general meeting
- following the organisation’s annual general meeting, as new directors may have been appointed.
**Financial management**

<table>
<thead>
<tr>
<th>Checklist of requirements</th>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>Treasurer or management provides up-to-date financial reports on a regular basis.</td>
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<tr>
<td>The financial reports provide adequate information needed for financial decision-making by the board.</td>
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<tr>
<td>The organisation prepares an annual budget and a revised annual estimate (actual Year to Date and YTD &amp; Forecast).</td>
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<tr>
<td>The treasurer reports the financial position of the organisation against budgets and estimates.</td>
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<tr>
<td>The board monitors budgetary performance.</td>
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<tr>
<td>The organisation has appropriate insurance and the board deliberates the insurance renewal process on an annual basis.</td>
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</tr>
<tr>
<td>There are financial policies and procedures in place to guide officers of the organisation (treasurer/general members).</td>
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<tr>
<td>The board understands and authorises the policies for monitoring cash, purchasing and major contracts, etc.</td>
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</tr>
<tr>
<td>The board understands that the process of internal control and segregation of duties (i.e. each step in financial handling - receipt, recording, banking, reporting) is not completed by one person.</td>
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<tr>
<td>The organisation has an appointed independent auditor.</td>
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If your organisation has answered ‘no’ to any of these requirements, it is recommended that you either implement the practice or, if the board has elected not to follow these requirements, ensure that you are not in breach of any legislative or compliance requirements. It may also be useful for the board to minute its rationale for departing from a partial item on the checklist.
C. Legislative requirements

If your organisation is incorporated under the Associations Incorporation Act (SA) 1985 or under the Corporations Law, there are specific legal obligations in relation to financial responsibilities that are also relevant to your organisation’s operations.

**Accounting records**

All organisations must take reasonable steps to keep accounting records that record and explain the transactions and financial position of the organisation. An organisation and any officer of the organisation who fails to do this can each be fined.

Additionally, under the Act, organisations should keep a receipt book, a deposit book, correctly filled in cheque butts, bank statements and a general ledger. The records must be kept at the organisation’s office or in the custody of an officer of the organisation, whichever the rules or a resolution of the board allow.

**Lodgement of financial accounts**

Only prescribed organisations are required to submit an annual audited financial statement to the Office of Consumer and Business Affairs. Prescribed organisations are defined in the Association Incorporation Act (SA) 1985 (Section 35) and, in general, they are organisations with gross receipts of more than $500,000 per annum.

Examples of gross receipts include:

- government funding
- membership fees
- donations
- fundraising income.

**Legislative requirements checklist (Associations Incorporation Act and Corporations Act)**

The following tables provide a checklist of some of the key financial reporting obligations under the Associations Incorporation Act and requirements under the Corporations Act 2001.

It is recommended that your organisation identify which Acts are applicable, retain copies within the organisation for reference purposes and build on the checklists below to ensure all financial responsibilities are understood and assigned to a board member.

Use the checklists below to help you understand the main requirements. These checklists are not intended to be a comprehensive list of your organisation’s requirements and are not a substitute for an organisation determining its full obligations under each of the Acts.

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37 Note: The Associations Incorporations Act is currently under review, and therefore these requirements may change.
Key risks – knowing what they are and how they can be managed cont.

**Associations Incorporation Act (SA) 1985**

<table>
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<tr>
<th>Checklist of requirements for prescribed organisations</th>
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<tbody>
<tr>
<td>Must maintain financial records - Section 35 and 39C.</td>
</tr>
<tr>
<td>Accounts must be lodged with the Corporate Affairs Commission.</td>
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<tr>
<td>The accounts must fairly present the results of the operations of the association and its financial position (Section 35).</td>
</tr>
<tr>
<td>Audit of annual accounts - by a registered company auditor or a member of CPA Australia, ICAA, or IPA or a person the Commissioner considers to have appropriate qualifications.</td>
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<tr>
<td>Accounts to be presented to members.</td>
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**Corporations Act 2001 – incorporated associations**

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<th>Checklist of requirements</th>
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<tbody>
<tr>
<td>Must maintain financial records - Section 286.</td>
</tr>
<tr>
<td>Lodgement of accounts with ASIC — Section 319(1). Must lodge a directors’ report and declaration, balance sheet, profit and loss statement, cash flow statement, statement of changes in equity and the notes to the financial statements.</td>
</tr>
<tr>
<td>Accounts to be presented to members. Must be distributed to members no more than 21 days before the AGM or four months after the end of the financial year (Section 315).</td>
</tr>
<tr>
<td>Audit requirements are dependent on the level of annual revenue. Annual revenue &lt; $250,000 – no audit or review requirements unless required by ASIC. Annual revenue &lt; $1,000,000 – can elect to have a review rather than audit. A CPA, ICAA or IPA must conduct the review. Annual revenue &gt; $1,000,000 – audit must be completed by a registered company auditor.</td>
</tr>
</tbody>
</table>

**Key Financial Policies**

Financial management is not only about understanding the financial information in your organisation and using this information to improve organisational operations, it is also about ensuring that the right policies and procedures are in place to ensure:

- the financial information you are using is accurate, complete, up to date and reliable
- the safe guarding of the club’s financial assets (cash, investments, etc.)
- that investments by the organisation are protected
- the review and reliability of the financial information will lead to the correct decisions.

For complete financial management of your organisation, you need to consider implementing good financial controls to detect and prevent errors, theft or fraud.
Explicit policies and procedures set out the required approach, responsibilities and processes for club officers and members to properly administer the financial matters of the organisation in accordance with its wishes and consistent with statutory requirements and sound financial management practices.

If your organisation has an audit and finance committee, it may be worthwhile to ensure that it has recently reviewed the range of policies and procedures that your organisation has in place and also consider the policies and procedures that need to be developed.

### Corporations Act 2001 – incorporated associations

<table>
<thead>
<tr>
<th>Financial control</th>
<th>Policy and/or other documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Controls are in place for cash handling</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Cash handling and receipting</strong></td>
<td></td>
</tr>
<tr>
<td>Assigning the responsibility of collecting cash or transacting on behalf of the organisation to designated officers of the organisation. In other words, the collection and receipting of cash is restricted to nominated members of the organisation.</td>
<td></td>
</tr>
<tr>
<td><strong>Controls relating to the safeguarding of assets</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Disposal of assets</strong></td>
<td></td>
</tr>
<tr>
<td>Limiting the authority regarding the sale or disposal of the organisation’s assets to designated board members and only with the authority of the full board (preferably by board resolution).</td>
<td></td>
</tr>
<tr>
<td><strong>Controls are in place for committing the organisation’s resources (i.e. spending, contracting, etc.)</strong></td>
<td></td>
</tr>
<tr>
<td>Contracts, including leases, are legal agreements that commit the organisation to fulfilling certain requirements or obligations, often financial. It is advisable to maintain a record of contracts, including such details as commencement date, term, and frequency of payments, amount to be paid and any other special conditions that need to be fulfilled.</td>
<td></td>
</tr>
<tr>
<td><strong>Key financial accounts are regularly reconciled</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Bank reconciliation</strong></td>
<td></td>
</tr>
<tr>
<td>Treasurer to perform reconciliation between bank statements and related financial reporting, control accounts for all bank, investment and cash accounts. The board to periodically validate the reported amount of cash at the bank to the bank statement.</td>
<td></td>
</tr>
<tr>
<td><strong>Authorised (and number of) signatories</strong></td>
<td></td>
</tr>
<tr>
<td>All cheques must contain two eligible signatures. Eligible signatories are board members or staff members who have been previously nominated and endorsed by the board. Similarly, to the extent possible, all EFT transactions should involve two authorised signatories. Avoid giving sole authority to one individual, unless there are extensive detective and compensating controls.</td>
<td></td>
</tr>
</tbody>
</table>
Financial Management - Useful Websites and Other Resources

For more information relevant to financial management and policies, please refer to the following resources:

Example policies
- Institute of Community Directors

Training
- Australian Institute of Management

Other
- Australian Sports Commission
- Australian Taxation Office
- Australian Charities and Not-for-Profits Commission

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43 The National Standard Chart of Accounts (NSCOA) is a data entry tool and data dictionary for not-for-profits, including charities. All Australian governments (Commonwealth, state and territory) have agreed to accept NSCOA when requesting information from not-for-profits. While NSCOA is not compulsory, there are benefits in using it.

It is most commonly used in the not-for-profit sector, including charities. The NSCOA may also be particularly useful if your organisation is about to change or update its accounting system or thinking about updating and improving its financial reporting. https://www.acnc.gov.au/ACNC/Manage/Reporting/NSCOA/ACNC/Report/ChartofAccounts2.aspx
Contract management

In contract management, managing risks means identifying and controlling factors that may have an impact on the fulfilment of a contract. Regardless of the specific nature of the contract your organisation may enter into, there are a few key questions that should be addressed to identify and manage the potential risks prior to the commencement of the contract.

Refer to this contract checklist as guide when negotiating, executing and managing contracts.

<table>
<thead>
<tr>
<th>Preliminary</th>
<th>Yes</th>
<th>No</th>
<th>For items marked as ‘No’, detail actions required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>For large contracts, has a due diligence and credit check been conducted on the other party? If not, explain why these were not necessary.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For large contracts, have you been provided with details of the contractor’s public liability and professional indemnity insurance – i.e. level of cover and expiry date?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Key risks – knowing what they are and how they can be managed cont.

<table>
<thead>
<tr>
<th>Contract contents</th>
<th>Yes</th>
<th>No</th>
<th>For items marked as ‘No’, detail actions required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are the correct legal names and ABN/ACN numbers advised on the contract and have they been checked against the ASIC Company register?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the contract include clauses to cover, but not limited to the following:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• defined start and finish dates</td>
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<td></td>
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<tr>
<td>• impacts and compliance of local/interstate legislation. Does the contract explicitly state which law has jurisdiction?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• confidentiality</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• publishing rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• GST tax issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Does the agreement address the relationship and liability/indemnity/ownership and rights for any sub contracting?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• conflict of interest</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Force Majeure, which releases parties of their contractual obligation in the event of war/natural disaster that block completion of the contract.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• dispute resolution and escalation (Does the contract address dispute resolution processes and the position should a dispute not be resolved?)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• price and progress payments clearly stated.</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Termination and disputes</th>
<th>Yes</th>
<th>No</th>
<th>For items marked as ‘No’, detail actions required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you understand the circumstances in which you can end the contract?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there provision to allow for the formalisation of changes or variations throughout the term of the contract?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Key risks – knowing what they are and how they can be managed cont.

### Execution

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>For items marked as ‘No’, detail actions required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has legal advice been obtained prior to contract execution?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does the intended signatory have the appropriate financial delegation and authorisation of the full board/committee?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Ongoing contract management considerations

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>For items marked as ‘No’, detail actions required.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has a member or other individual been formally appointed by the board/committee for the responsibility of the ongoing management and administration of the contract including variation management and change control?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are there procedures in place to report on the progress of the contract to the board on a regular basis?</td>
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</tr>
</tbody>
</table>

**Key point:** Seek professional advice when you are unsure of the meaning or consequence of any contractual issue, especially if a substantial amount of money is involved.

### Probity

**What is probity?**

The term probity means integrity, uprightness and honesty. Probity is also about ensuring that the processes in tendering and procurement transactions are conducted with integrity, fairness and honesty.

Probity is a behaviour and an attitude. It involves adopting an ethical and transparent approach, allowing the process to withstand scrutiny. Probity is about adherence to the following key principles:

- Ensuring the process is as competitive as possible.
- Ensuring a fair, impartial and unbiased process where no-one has an unfair advantage or is disadvantaged. (For example, ensuring that the process is conducted in accordance with the process terms and conditions provided to tenderers for all tenders.)
- Ensuring all have access to the same information at the same time.

- Having consistency and transparency of the process. (For example, disclosing to tenderers the method to be adopted for the evaluation of tenders, including all evaluation criteria.)
- Maintaining appropriate confidentiality. Sensitive information of the tendering organisation should be identifiable (i.e. marked as ‘confidential’).
- Identifying and resolving any real or potential conflicts of interest. In the context of a tender process, conflicts of interest can arise when members of your organisation involved in the tender process, their families or business associates stand to gain a benefit or advantage.
- Ensuring that appropriate records are kept (i.e. ensuring all process and probity issues and actions taken to resolve such matters are fully documented).

Application of probity principles should ensure that when your organisation undertakes purchases (significant or otherwise) or commits to a long-term contractual arrangement, a fair and robust process is undertaken and as a result minimises potential liability if the process outcome is challenged (for example, selection of one supplier over another).
Key risks – knowing what they are and how they can be managed cont.

**Human resource**

Human resource risk is the risk that the organisation may incur losses or will not meet its key objectives due to:

- drain or loss of key personnel (for example, coaches, officials)
- deterioration of morale
- the inadequate development of human resources
- inappropriate working schedules
- inappropriate working and safety environment
- inequality or inequity in human resource management or discriminatory conduct.

All organisations have personnel. Regardless of the size of your organisation, it survives and thrives because of the capabilities and performance of the people that work within it.

Your organisation may have both paid and unpaid staff members. Sport and recreation organisations, in particular, rely heavily on the support of volunteers to enable them to provide the level of service to their members with the resources they have available.

Because people are such an integral part of sport and recreation organisations, how you treat them is vitally important. To get the best out of your people, it is important to make them feel valued and part of your organisation regardless of whether they are paid or unpaid.

The human resource concepts and issues discussed here aim to provide you with an understanding of the processes involved in recruiting, managing and retaining people within your organisation.

Having sound systems and sound practices may assist you in bringing the right people into your organisation and keeping them there. They can help them to develop a sense of commitment to the organisation, provide and plan for development opportunities, offer support and reward performance.

To minimise further risk in this area, ensure you stay compliant with the relevant legislation and regulations that relate to the employment of staff and engagement of volunteers.

**Key point:** Treat paid and unpaid staff (volunteers) equally well and it will strengthen your club or association.

**Human Resource Management – Key Legislation**

Key acts, regulations and standards relevant to the human resources management function are listed below.

**National Employment Standards**

The National Employment Standards (NES) set out minimum conditions for employment. These include the entitlement to:

- a maximum standard working week of 38 hours for full-time employees, plus ‘reasonable’ additional hours
- a right to request flexible working arrangements
- parental and adoption leave of 12 months (unpaid), with a right to request an additional 12 months
- four weeks paid annual leave each year (pro rata)
- ten days paid personal/carer’s leave each year (pro rata), two days paid compassionate leave for each permissible occasion and two days unpaid carer’s leave for each permissible occasion
- community service leave for jury service or activities dealing with certain emergencies or natural disasters (this leave is unpaid except for jury service)
- long service leave
- public holidays and the entitlement to be paid for ordinary hours on those days
- notice of termination and redundancy pay
- the right for new employees to receive the Fair Work Information Statement.

The NES only apply to paid employees (not volunteers) and only certain entitlements apply to casual workers.

For more information about the NES refer to the Fair Work[44] website.

**Key point:** As an employer you must be aware of the minimum National Employment Standards.

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Modern Awards

In addition to the NES, a modern award may cover any paid employees you have. These awards cover an industry or occupation and provide additional enforceable minimum employment standards.

Modern awards contain terms about minimum wages, penalty rates, types of employment, flexible working arrangements, hours of work, rest breaks, classifications, allowances, leave and leave loading, superannuation, and procedures for consultation, representation, and dispute settlement. They may also contain terms about industry specific redundancy entitlements.

For more information about modern awards or to find an award, visit the Fair Work Awards website.

Key point: As an employer you must be aware of the relevant awards covering your staff.

Work Health and Safety (WHS)

Work health and safety should be a key area of concern for your organisation. You have an obligation to provide a safe and healthy workplace to all staff (paid and unpaid). The consequences of not doing so can be severe.

In South Australia, there are two relevant pieces of legislation: Work Health and Safety Act 2012 (SA) and Work Health and Safety Regulations 2012 (SA). These acts:

- establish health and safety duties, including the primary duty to protect any person from exposure to hazards and risks that arise from work
- provide for worker representation, consultation and participation including through Health and Safety Representatives and Health and Safety Committees
- enable compliance and enforcement through SafeWork SA (the regulator)
- provide for the creation of regulations and codes of practice.

For more information regarding WHS, see the section of this resource titled Legal Risk, Key Concepts and Legislation – Work Health and Safety or the SafeWork SA website.

Privacy

Privacy in clubs and associations is about how your club or association keeps personal information secure and protects it from misuse, loss and unauthorised disclosure. The Commonwealth Privacy Act sets out the requirements an organisation is legally obliged to implement to protect people’s personal information. It requires that your organisation:

- takes reasonable steps to ensure that individuals are aware of the information that your organisation collects about them and what this information is used for
- ensures that personal information is kept secure and is accurate and up-to-date
- provides individuals with access to their information on request and to correct information where necessary.

Key risks – knowing what they are and how they can be managed cont.

Key point: As an employer you must be aware of the relevant awards covering your staff.

Key risks – knowing what they are and how they can be managed cont.

For more information regarding privacy principles, refer to the Australian Sports Commission\(^\text{47}\) website. In this resource we have also outlined some of the recent changes in legislation. See the section titled Legal Risk, Key Concepts and Legislation - Privacy.

**Human Resource – Key Documents**

Listed below are a number of key documents relevant to the management of people in your organisation (paid and unpaid). If your organisation does not already have them in place, it is recommended that you work towards developing them.

If a number of these documents are already being used, it is recommended that you undertake an assessment of your performance against legislation and best practice guidelines.

**Purpose statement**

All organisations should have a clearly defined purpose statement. This outlines your organisation’s purpose for existing (e.g. to strengthen the community [of your club or association]).

In order to develop a purpose statement, you should have a clear understanding of and focus on what your organisation wants to achieve and why. You should be clear about what your club’s goals and objectives are and the rationale on which these are based.

Your purpose statement is a key document that should be included and discussed with new staff (paid or unpaid) as part of the induction process. Having a clear purpose statement that outlines the organisation’s key goals and principles and a framework for achieving these can assist your club or association in engaging staff, as it provides them with meaningful work and a clear understanding of how their efforts contribute to the organisation and its success.

**Code of conduct**

Your club or association should have a code of conduct that sets out what your organisation considers to be an acceptable standard of behaviour and conduct. The code of conduct outlines how you expect staff, volunteers, members and their guests to behave. It should explicitly outline behaviour that is acceptable and behaviour that is unacceptable.

**Disciplinary action**

When a group or individual demonstrates behaviour that is unacceptable according to your organisation’s code of conduct, disciplinary action may be appropriate. For example, if a staff member or volunteer is observed making derogatory comments to others, it may be appropriate to issue a warning. Should the behaviour continue, further action might need to be taken; however, incidents should be assessed and addressed on a case-by-case basis.

For more information about developing a code of conduct, refer to the Office for Recreation and Sport\(^\text{48}\) website.

**Key point:** Make sure you have a code of conduct and ensure it is actively communicated to key staff, volunteers, members and stakeholders.

**Policies and procedures**

Your club or association should have a set of standard policies and procedures in place to help guide behaviour and decision-making and manage human resource risk within your organisation.

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Key risks – knowing what they are and how they can be managed cont.

While a policy provides guidance on the standards for your organisation, a procedure outlines how these standards should be implemented. Some of the policies (and associated procedures) that you may need to develop include:

- recruitment
- work health and safety
- volunteer management
- equal employment opportunity (EEO)
- staff induction
- member protection
- volunteer induction
- managing unsatisfactory performance
- misconduct and disciplinary action
- bullying and harassment
- leave (incorporating personal leave, annual leave, carer’s leave, compassionate leave, long service leave and unpaid leave)
- dispute resolution
- first aid
- injury and incident reporting
- acceptable use of computers, Internet and email.

For more information and templates, refer to the Institute of Community Directors’s website.

Additional assistance and useful tools regarding misconduct and disciplinary action and bullying and harassment can be found at the Play by the Rules website.

**Key point: Standard policies and procedures will help to guide behaviour within your organisation.**

**Dispute resolution**

Disputes between individuals may occur within your organisation. It is important that your organisation has a clear and fair process for managing these disputes. In the first instance, the parties involved in the dispute should be encouraged to meet and discuss the issue.

The purpose of this process is to identify the problem and options for resolution and consider these options with the aim of achieving a resolution that is acceptable to both parties. If this process does not produce the desired outcome, mediation by an independent person may help. By developing an effective dispute resolution policy and procedure, you can reduce the risk of these issues escalating and requiring (potentially costly) external involvement.

For more information regarding dispute resolution, refer to the Play by the Rules and Fairwork websites. Mediation SA (8350 0376) may provide independent and free support.

**Key point: Deal with all issues as soon as they arise.**
Volunteer management plan

Volunteers play a vital role in the sport and recreation industry. It is likely that without volunteers, your club or association would find it difficult to provide an appropriate level of service to the community. As such, a large and active volunteer workforce is essential to the survival of the industry.

A volunteer management plan is an important resource that can help you to ensure that you recruit and retain the best people to optimise the success of your organisation and reduce the risks associated with not having the right people in the right positions.

The V-STAR\(^53\), online volunteer management tool for sport and recreation organisations developed by the Office for Recreation and Sport is a useful resource for organisations to utilise when developing their volunteer management plan.

Key point: Develop a volunteer management plan.

Getting and retaining the best people

Recruitment practices

Recruiting the right people to your organisation is vital in ensuring its ongoing success. Whether you are recruiting volunteers or paid staff, you should ensure that you have considered the following:

- a clear description of the goals and purpose of the organisation (as discussed above)
- a job description for the relevant position, which should outline:
  - what the person is expected to do
  - the skills or qualifications (e.g. first-aid certificate, police check, etc.) a successful candidate would be expected to possess
  - who the person should speak to if they have a problem
  - an understanding of how the position will meaningfully contribute to the organisation.

Once these aspects are in place, you can begin to search for possible candidates. When recruiting individuals, you may choose to approach individuals already involved in your organisation. Alternately, you may wish to advertise the positions through community noticeboards, newspapers, or online.

Once you have identified potential candidates for your position, you will need to screen them to ensure that they will be suitable and fit the needs of your organisation. You will want to make sure that the candidate is competent; that they get along with other people and that they have the skills that you are looking for. It can be difficult to reject someone whom you do not think is suitable; this is where a clear job description comes in handy as it provides objective criteria for you to assess candidates against. By ensuring that you are open and transparent throughout the recruitment process and can justify your decisions using objective criteria, you can reduce the risk of candidates feeling that they have been unfairly assessed or even discriminated against.

For more information about recruiting paid and un-paid staff members, refer to the Our Community\(^54\), Fairwork\(^55\), and Australian Government Business\(^56\) websites.

Key point: When recruiting, make sure that you are transparent and objective in your decision-making.

Key risks – knowing what they are and how they can be managed cont.

**Induction**

Once you have successfully recruited new people to your organisation, you need to induct them. Induction is the process through which new members (whether paid employees or volunteers) are welcomed to your organisation, given details about their position and the day-to-day operations of the organisation and introduced to key people.

Taking up a new position is a critical period for staff members and for the organisation. New people cannot be expected to understand the requirements of their new position or how your club or association functions on a day-to-day basis without a well-designed induction process. Inductions can help reduce stress on new people, make them feel welcome and reduce the likelihood of turnover.57

This process of induction is based on socialisation, which is the process of assisting a new staff member to learn values, expectations and norms of your organisation. To ensure that new people are appropriately ‘socialised’ to your club or association, the induction process should cover:

- relevant policies and procedures
- procedures for dispute resolution
- emergency processes and resources
- the expectations of their position
- supervisors (if any) and other people they will be working with
- day-to-day routines.

For more information about induction and to obtain an induction checklist, refer to the Club Help58, V-STAR59, and Fairwork60 websites.

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**Key point:** Make sure that you have a process in place to induct all new staff (paid or unpaid) into your organisation.

**Job descriptions**

Job descriptions specify the duties, tasks and activities that are expected of each individual in your organisation. Every person within your organisation (whether paid or unpaid) should have an up-to-date job description. As roles evolve with time, these changes can be reflected in the job description. Ideally, job descriptions should be reviewed on an annual basis.

Where possible, it can be a good idea to involve the position holder in the development of the job description. This will help to ensure that the document is an accurate reflection of the duties, tasks and activities that are undertaken in the course of the particular role. Care might need to be taken when doing this to reflect what any future person in the position would be required to do against the tasks the current position holder undertakes. A good job description should incorporate the following elements:

- a summary of the mission/purpose and major activities of the organisation
- a description of the purpose and duties of the position including actual tasks that the person will be expected to perform
- areas of accountability
- the type of position, i.e. is it full-time, part-time, casual (all paid) or a volunteer role
- if a volunteer role, the expected time commitment each week/month
- workplace location
- required and preferred skills
- expected performance.

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Key risks – knowing what they are and how they can be managed cont.

For a job description template, refer to the Fairwork website. For example volunteer job descriptions, refer to the V-STAR website.

Key point: Job descriptions provide clarity about what is expected of people within their role.

Contracts

If your club or association employs paid staff, perhaps in hospitality or administration roles, it is recommended that you have written and signed contracts in place. A contract forms the basis of the employment relationship and should cover all the conditions of employment.

Key point: All paid positions need a contract of employment.

Training and development

Training and developing your staff (both paid and unpaid) is essential for strengthening skills and motivating individuals to achieve and maintain satisfaction in their roles. People who are competent in their roles (i.e. well-trained) are likely to feel satisfied whereas people who lack confidence are likely to feel stressed.

Training your staff members to ensure that they have the right skills and knowledge is a vital part of your risk management plan. Numerous training courses are available to your organisation.

Internal support through mentoring or buddy systems can also be very productive.

For more information about training opportunities within South Australia visit the V-STAR and Volunteering SA websites.

Key point: Make sure your staff and volunteers are always learning something, as this will keep them connected to your organisation.

Evaluating and rewarding performance

The work of both paid and unpaid staff members should be reviewed regularly. This process may include:

- reviewing goals and objectives
- identifying results achieved
- obtaining feedback from current staff members and customers (i.e. club members and other patrons)
- assessing the performance of staff members
- conducting exit interviews for departing staff members.

In addition to evaluating or reviewing the performance of your staff, it is also important to recognise and reward individuals for their efforts. This helps to maintain morale among staff and demonstrates that your club or association places real value in the work that they do. There are many different ways you can recognise and reward people within your organisation; this includes both financial and non-financial rewards such as providing a wind-down party after a special event, listing their names in your club newsletter or even just a simple ‘thank you’.

For more information on how to retain people within your organisation, including evaluating and rewarding performance visit the Australian Sports Commission and V-STAR websites.

Key point: Give feedback to staff and volunteers regarding their performances so they know how they are doing.

---

Key points:

- Job descriptions provide clarity about what is expected of people within their role.
- Make sure your staff and volunteers are always learning something, as this will keep them connected to your organisation.
- All paid positions need a contract of employment.
- Give feedback to staff and volunteers regarding their performances so they know how they are doing.

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65 http://www.volunteers.org.au/training/
67 www.recsp.org.au/v-star
**Member and child protection**

**Member Protection**

The Australian Sports Commission (ASC) advises that member protection is a term now widely used in the sports industry to mean practices and procedures that protect a club’s members. Members can include member associations, affiliated clubs and individuals including athletes, administrators, coaches and officials.

Member protection is also about managing one of the biggest risks to your organisation – the harming of members.

**Member Protection Policy**

As part of your risk management strategy, you may wish to adopt or develop a selection of policies specific to member protection. This policy can be a combination of a number of traditionally separate policies including discrimination, harassment and child protection. (Refer to the section titled Child Protection.)

The ASC has developed a member protection policy framework template, which can be found on the Australian Sport Commission’s Member Protection website.

The template is a generic document meant for guidance only. It is designed to assist organisations when writing their own member protection policy. The template includes:

- policy position statements on child protection
- harassment and sexual relationships
- organisational and individual responsibilities
- code of conduct.

If you are planning to develop a member protection policy, it is recommended that you investigate the policy that your peak body, usually your state sport or recreation organisation, has in place to ensure that your policy or procedures are aligned to that which is recommended for your sport or activity.

**Member Protection Information Officer**

Another strategy that can support a member protection policy is a member protection information officer, (MPIO). An MPIO is a trained person, usually appointed by the national, state or regional association, who can assist your organisation with advice on managing member protection complaints and conflicts when they arise.

An MPIO is responsible for providing information to an individual (a member of your organisation) who makes a complaint or raises a concern about their rights, responsibilities and options.

Their role also includes providing confidential information, moral support and options to help resolve issues. The MPIO is the central contact for any concerns or information about harassment, sexual abuse or inappropriate behaviour.

An MPIO can also be the designated individual responsible for providing information and advice to an organisation’s administrator and complaint handlers with regard to the member protection policy of that organisation.

MPIOs are generally impartial; they do not mediate or investigate complaints.

An MPIO can be freelance and not linked directly to the organisation or a specific sport or recreation body.

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**Key point:** Organisations are encouraged to clearly distribute the name and contact details of their MPIO.
There are a number of steps in becoming a certified MPIO. These are listed on the Australian Sports Commission website or through the Play by the Rules online training.

It is also recommended that you contact the ORS for further information: 08 8457 1408.

**Complaint Handling**

Effective complaint handling is as much about ensuring that people's rights are being protected as it is about ensuring that your sport is safe, fair and inclusive to all its members.

Within your organisation, it is recommended that you:

- Appoint an official complaint handler(s). A complaint handler is any person in authority in your organisation who may be required to resolve complaints or concerns in the normal course of their duties. Complaint handlers can be board members, committee officers (president, secretary and committee members), coaches, officials and grounds people. They can reside at a club, state or national organisation level.

- Formalise the complaint handling process by way of creating an organisational policy that clearly outlines the processes and procedures to be followed. Sample complaint handling policies can be found on the Touch Football Australia and Sport Matters websites.

**Complaint Handling - Training**

The ASC, in partnership with Play by the Rules, has developed a free, seven-module on-line course. The modules include:

1. Introduction to Complaint Handling
2. Complaint Resolution Procedures
3. Member Protection and the Law
4. Listening and Responding
5. Meeting with a Contact
6. Ethical and Practical Considerations
7. Nipping it in the Bud.

The Play by the Rules website also has a large range of resources and tools to assist your organisation in handling complaints.

**Child Protection**

Children and young people attending your organisation and participating in the activities being offered have a right to be safe and protected at all times. Your organisation has a responsibility to children to provide a safe environment that minimises the risk of discrimination, harassment and abuse.

The Children’s Protection Act 1993 (SA) requires all organisations that provide health, education, welfare, sporting or recreational, religious or spiritual, child care, cultural, entertainment, property or residential services wholly or partly for children, to develop policies and procedures to create and maintain a safe environment for children and young people. The Act also requires that suspicion or instances of child abuse or neglect are reported to the relevant authorities. A child is any person less than 18 years of age.

The South Australian Office for Recreation and Sport provides a concise guide for all participants titled “Keeping Children Safe in Recreation and Sport”.

The information it contains will be useful to many people who undertake various tasks in your organisation. The guide includes a definition of child protection and the role of the club, parent, volunteer and participant. It also has checklists that will help you keep children safe in your organisation and links for more other information and services.

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71 http://www.playbytherules.net.au/about-complaints
This publication also includes the following seven principles of good practice set by the Chief Executive of the Department for Education and Child Development (DECD). These principles should underpin your organisation’s commitment to providing a child safe environment:

• Identify and analyse risk of harm.
• Develop a clear and accessible child safe policy.
• Develop codes of conduct for adults and children.
• Choose suitable employees and volunteers.
• Support, train, supervise and enhance performance.
• Empower and promote the participation of children in decision-making and service development.
• Report and respond appropriately to suspected abuse and neglect.

What does your organisation need to do?

According to DECD, organisations must undertake the following key tasks as part of their obligation to establish and maintain a child safe environment:

• Develop a risk management strategy with respect to risk of harm to children from someone within the organisation.
• Develop policies and procedures such as a child safe policy, code of conduct, and a procedure for reporting child abuse and neglect.
• Conduct relevant history assessments.
• Lodge a statement or check whether a statement has been lodged on your behalf with DECD, which outlines the organisation’s child safe environment policies and procedures. (This statement may be lodged by a representative body on behalf of organisations they represent).

1. Policies

Your organisation needs to have appropriate child safe policies and procedures in place.

Child safe environments policies and procedures should be established by your board and communicated to all relevant personnel. This may include:

• agents
• employees
• contractors
• sub-contractors
• volunteers
• parents
• members
• anyone else involved in the organisation who has contact with children or their records.

The policy will need to demonstrate to staff, volunteers, parents and children that your organisation is committed to the safety of children; it should set out appropriate standards of behaviour and practices for people working and volunteering with children.

The policy will also need to list the steps your organisation will take to promote the safety and wellbeing of children. It will also need to be tailored and relevant to your organisation’s focus and activities.

The DECD website provides a range of guidelines. Sample policy templates and other information to assist your organisation with the development of an appropriate policy can be found on the Office for Recreation and Sport website.

The member protection policy template provided by the Australian Sports Commission includes a child protection policy (Item 6). This policy is compliant with the requirements of SA Legislation.

An association, state sporting organisation or national body may require their affiliated clubs to adopt their member protection policy or one that can be adapted to meet the club’s requirements.

Key point: Organisations are advised to contact their governing body before creating their own member protection policy.

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73 www.families.sa.gov.au/childsafe
74 www.ors.sa.gov.au/create_a_child_safe_environment
Key risks – knowing what they are and how they can be managed cont.

Organisations that do not have a governing body or do not have a member protection policy provided for them can adapt the following templates, which meet the current child protection legislation:

- national member protection policy template – Australian Sports Commission
- state version - member protection policy template
- club version - member protection policy template
- sample code of conduct.

These templates can be found on the Office for Recreation and Sport75 website.

Notwithstanding the resource assistance listed above, the following are important elements for you to consider when developing and implementing a child safe policy:

- **Consulting** - Involve all members of your organisation in the development of your child safe policy and code of conduct. Wide consultation will help ensure that the policy will be used, understood and supported by everyone in your organisation.

- **Child protection policy inclusions** – recommended content:
  - **Statement of the organisation’s commitment** - Your policy should clearly state your organisation’s commitment to the safety, protection and wellbeing of children. This statement might be quoted on newsletters, wall posters and in other contexts to ensure that this commitment is understood by everyone involved in your organisation.
  - **Legislation** - Your policy should reflect and refer to the obligations under the *Children’s Protection Act 1993* and, more importantly, your organisation should ensure it understands its obligations under the Act. A useful tool is the DECD’s website’s legislation about child safe environments. Refer to: [http://www.families.sa.gov.au/pages/protectingchildren/CSELegislation/](http://www.families.sa.gov.au/pages/protectingchildren/CSELegislation/)

- **Relevant history assessments** - Where it applies, your policy should also refer to your procedure for conducting relevant history assessments.

- **Bullying and harassment** - Your policy should contain a statement about how your organisation will address bullying by, or against, children in your organisation.

- **Understanding privacy and data protection** - The policy should also address the collection, retention, use and disclosure of personal and other sensitive information. Appropriate safeguards must be in place to protect information about your organisation’s members. For more information, refer to the section titled Legal Risk, Key Concepts and Legislation - Privacy.

- **Complaints management and disciplinary action** - Establish a process for managing complaints and disciplinary proceedings that is accessible to everyone in your organisation (including children and young people) and refer to it in your policy.

- **Review, update and refine** - Set a review date for your policy. Your organisation’s policy should also be reviewed and updated if:
  - an issue is identified
  - if new legislation is enacted
  - your peak body changes their policy
  - new standards are introduced.

- **Review your risk** - Your policy should include, or refer to, your risk management action plan. The plan should identify, assess and take steps to minimise risks of harm to children that could arise from the action or inaction of someone in your organisation.

- **Choosing and developing the right people** - Establish safe and fair recruitment and selection processes for employees and volunteers. This should include comprehensive screening processes and exclusion of people who are assessed as posing an unacceptable or high risk to children.

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Key risks – knowing what they are and how they can be managed cont.

- Developing a code of conduct - Your organisation should also develop a code of conduct that:
  - promotes child safety
  - encourages positive work practices
  - provides guidance about the behaviour, relationships, attitudes and responsibilities expected from employees and volunteers who are working with children.

Your organisation should also have a procedure for dealing with any situation where the code is breached.

For additional assistance in developing a code of conduct and sample templates, visit The Department for Education and Child Development and the Play by the Rules websites.

**Policy - reporting child abuse and neglect**

Your organisation’s staff and volunteers may be mandated notifiers and required by law to report any suspicions of child abuse and neglect. Your organisation must have a policy for ensuring these people are aware of this obligation and the appropriate process for making reports to the Child Abuse Report Line (13 14 78).

DECD’s website provides comprehensive guidance about reporting child abuses and neglect.

Some of the topics listed on the website to assist your organisation include:

- How do I report suspected child abuse or neglect?
- What do I need to provide when I make a report?
- How do I follow up on a report?
- What are the possible indicators of abuse?
- How do I respond to a child who has told me about abuse?
- What does the legislation say?

- What is the legal requirement to notify and penalty for failing to do so?
- Who is legally required to notify?
- What matters should not be notified?
- Is my duty of care fulfilled by notifying?
- Is a minister of religion required to notify on information received in confession?
- What is ‘suspicion on reasonable grounds’?
- What should I expect from a Child Abuse Report Line worker?
- Can my identity as the notifier be revealed?

**Communicate**

Ensure everyone in your organisation is aware of your policies and committed to achieving a child safe environment.

2. Relevant History Assessments

All people who work in a prescribed position with children in sport and recreation organisations in South Australia are required to undergo a relevant history assessment, unless an exemption applies.

To undertake a relevant history assessment the organisation must assess, as a minimum, a national police check.

Police checks for volunteers are generally provided at no cost through the Volunteer Organisation Authorisation Number (VOAN). Check with your state sport or recreation organisation before submitting your application with the police.

Alternatively, an organisation may choose to have the assessment completed by an authorised screening unit such as the Department for Communities and Social Inclusion Screening Unit (DCSI).

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79 A prescribed person is defined as a person who has regular contact with children or regularly works in close proximity to children and is not directly supervised or who is someone who manages or supervises such personnel.
This service meets the requirement of the Children’s Protection Act (1993), is more thorough than a police check and abolishes the need for the organisation to assess the information. It does, however, operate on a fee-for-service basis and is not covered by the VOAN.

Once you obtain the criminal history report (police check) of employees and volunteers who work with the children of your organisation, you are required by law to ensure that this information is dealt with in accordance with the ‘Standards for dealing with information obtained about a person’s criminal history as part of a relevant history assessment’.80

Exemptions
In some cases, the law will allow for the exemption of a person from the requirement to undergo a relevant history assessment. Organisations will need to examine the exemptions to see if any exemptions apply to the people working or volunteering in their organisation.

Even if some people meet the criteria for an 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.

The following organisations, persons and positions may be exempt from the requirement to conduct a relevant history assessment:
- a person volunteering for a service or activity in which their child ordinarily participates
- a volunteer who is less than 18 years of age
- a person working or volunteering for a short-term event or activity of less than 10 days duration or for no more than 1 day in any month
- a person occupying a position in which all work involving children is undertaken in the physical presence of the child’s parents or guardians and in which there is ordinarily no physical contact with the children
- a person who undertakes, or a position that only involves, work that is primarily provided to adults or is provided to the public generally and is not provided to any child on an individual basis
- an organisation that provides equipment, food or venues for children’s parties or events but does not provide any other services for children
- a person who has regular contact with a child as part of an employment relationship with the child (for example, a person working alongside a child or supervising an employee who is a child)
- a person who is appointed as a police officer or is a registered teacher (police officers and teachers are already subject to comprehensive relevant history assessments as a prerequisite for employment).

How to conduct relevant history assessments
There are standards that organisations must follow when conducting criminal history assessments and these standards can be accessed from the Families SA81 website.

Alternatively, a person may be directed or apply for an assessment to be completed by a recognised screening unit. At present, DCSI operates an approved screening unit. The screening unit will complete the assessment and provide a letter of clearance.

Obtaining a national police certificate
For more information and applications, visit the SA Police82 website. If your organisation requires an assessment to be completed visit the DCSI83 website.

81 www.families.sa.gov.au/childsaf
3. Statement by the organisation lodged with DECD

Under the Act, all organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child-care, cultural, entertainment, party or residential services wholly or partly to children must lodge a statement outlining their child safe environment policies and procedures with DECD.

An organisation may do this by completing the child safe environments compliance statement lodgement form in either hardcopy or on-line. This form sets out the minimum requirements an organisation must meet to demonstrate that it has established a child safe environment within the organisation.

Your state or representative body may have lodged this statement on behalf of its clubs. If clubs are unsure whether this has been done on their behalf, it is recommended they contact their representative body before submitting a statement.

For more information refer to the Department for Education and Child Development’s website or email DECDChildsafe@sa.gov.au

Mandated Reporting

Staff and volunteers of recreation and sport groups that are working with children or are in a management position in that organisation have a legal obligation to report any suspected child abuse and/or neglect.

DECD’s website provides comprehensive guidance about reporting child abuse and neglect.

Mandated reporting courses

Most people in sport who work with children are mandated notifiers (i.e. they must report suspected child abuse). However, it is not compulsory for all volunteers to attend mandated notifier training.

It is recommended that your organisation establish a ‘Child Safe Officer’ who has some training in mandated reporting and is assigned the responsibility of formally communicating information to others in the organisation.

The ORS provides Child Safe Officer training that is specific to sport and recreation organisations. See the Office for Recreation and Sport’s website for more information.

Managing incidences or allegations of child abuse

A resource called ‘Managing allegations of child abuse in recreation and sport’ is available and provides a step by step guide for organisations that become aware of an incident or alleged incident of misconduct towards children. It provides information to assist the organisation to understand their obligations and appropriate actions and can assist with minimising the impact of the incident.

This includes providing appropriate support to the victim and their family, managing the alleged offender, assisting the club and others involved and template letters to assist with informing the parents or others who may have been in contact with the alleged offender.

Summary

Like any other area of risk, it is recommended that you regularly review your policy and procedures regarding child protection to ensure they are effective and reflect any changes to your organisation, its activities and legislative changes.

Child protection requires a commitment to developing a child safe culture that is incorporated into your overall organisation’s risk management strategy. It is everyone’s responsibility to provide a safe environment to prevent and minimise opportunities for harm to children and to ensure their recreation and sport experiences are positive.

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84 www.families.sa.gov.au/childsaf
87 www.ors.sa.gov.au/__data/assets/pdf_file/0006/153664/child_abuse_allegations_guidelines_050115.pdf,
Sports integrity

Integrity in sport covers a range of ethical and moral issues that affect players, officials, coaches, members and other individuals associated with your organisation.

An organisation that displays integrity may be regarded as honest and genuine in its dealings with others. Integrity issues that sporting organisations face have changed as community standards on a range of issues have evolved.

Some of the key integrity issues facing sporting organisations today include:

- match fixing, illegal gambling and corruption
- racial vilification, harassment and discrimination
- fairness and inclusion
- the use of performance enhancing substances
- drug and alcohol abuse.

Sport is a central part of the lives of many South Australians and it delivers benefits to both individuals (discipline, team work, good health, friendships) and the broader community (community pride, cohesion and economic benefits).

As a sporting organisation within the community, you have a moral obligation and duty of care to ensure a fair, safe, ethical and inclusive culture within your organisation.

By promoting the integrity of your organisation and sport more generally, you can also help to safeguard your reputation, which has a number of key benefits for your organisation such as:

- increased participation – loyalty of current members and attraction of new members
- financial viability – through membership, attraction of sponsors and funding grants
- on-field success – attraction of players who want to be associated with a positive, healthy and successful club.

Key point: Promoting and ensuring the integrity of your sport and organisation has tangible benefits.

http://www.ausport.gov.au/supporting/integrity_in_sport/about/what_is_sport_integrity
Key risks – knowing what they are and how they can be managed cont.

Gambling and corruption

Betting or gambling is a legal and legitimate activity; however, fraudulent betting is not. Illegal sports’ betting is often linked to match fixing and associations with organised crime groups. Organisations should be aware that issues that impact on a sports integrity are not limited to professional sporting organisations or to a particular sport.

Along with illegal gambling, corruption and associations with outlaw groups are also emerging issues within the sporting industry. Clubs and associations should be cognisant of these issues and understand the threat that they pose to sport integrity.

Apart from the legal ramifications that may result from engaging in this type of activity, clubs or associations who are perceived to be involved in illegal or fraudulent activity may also lose sponsorship and members because of their poor reputation.

Key point: Your club or association should remain vigilant in regards to the potential issues associated with gambling and corruption within sport.

Doping and other illicit drug use

Sporting organisations play an important role in raising awareness for anti-doping. You are responsible for promoting an ethos of drug-free sport within your organisation at all levels.

Even if the Australian Sports Anti-Doping Authority (ASADA) does not test your organisation’s players, they still need to be educated about the status of certain supplements and other banned substances (including illicit drugs). For example, your players need to be aware that supplements ordered via the Internet may be intercepted by customs who report the importation of any banned substances directly to ASADA for investigation.

As leaders, you have an obligation to ensure that your members (including officials, players, family members and other support personnel) are educated and aware of issues related to doping. Under the World Anti-Doping Agency (WADA) code, ignorance is not an excuse for violating anti-doping rules. Allegations and instances of doping behaviour can seriously damage the reputation of your organisation.

By taking steps to educate and implement an anti-doping policy within your organisation, you can help to reduce the risk of this type of behaviour.

For more information and educational tools refer to the Australian Sports Anti-Doping Authority’s website.

For a list of prohibited substances visit the World Anti-Doping Agency and Australian Sports Anti-Doping Authority websites.

The South Australian Sports Medicine Association also offers educational services to sport and recreation organisations on performance and illicit drug use in a sporting environment.

Further information can be found at the South Australian Sports Medicine Association website.

Key point: Clubs and associations have an obligation to ensure that members can participate in the chosen activity in a safe and welcoming environment.

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Fairness and inclusion

Being inclusive means welcoming people into your club regardless of age, gender, race or ability. Changes in community expectations mean that inclusion is becoming an increasingly important issue for clubs and associations. Your organisation is important to your local community and can be a great place to encourage positive contact and cooperation between people from a range of different backgrounds and with a range of different abilities.

To be inclusive, your club needs to take proactive steps to ensure that everyone is welcomed and encouraged. Thankfully, many of these steps take very little time and effort – you may simply need to educate your members about the expectations of what it means to be an inclusive club.

Do a self-check on the Western Australia Department of Sport and Recreation92 website to see how inclusive your organisation is.

For more information about how to make your club more inclusive, visit the Play by the Rules93 website.

Key point: An inclusive club or association encourages people of all backgrounds and abilities to participate.

Racial vilification, harassment and discrimination

Racism, harassment and discrimination often go unnoticed; however, in some groups this type of behaviour has become a part of social and cultural norms. Behaviours that constitute harassment and discrimination may not only be unwanted by and offensive to the recipient, they may also be against the law.

Your organisation should strive to provide a safe environment for your members. If a club or association is found to be liable for racism, harassment or discrimination at a sporting event, it could have its reputation damaged or even face legal or financial penalties.

As such, it is important to ensure that your organisation has proper measures and policies in place to make sure that instances of racism, harassment and discrimination are identified and dealt with appropriately. You can include policies to address these issues in your member protection policy.

For more information visit the Play by the Rules94, and Racism. It Stops with Me95 websites.

Key point: Clubs and associations have an obligation to ensure that members can participate in the chosen activity in a safe and welcoming environment.

93 http://www.playbytherules.net.au/
94 http://www.playbytherules.net.au/component/content/article/81-links/1245-racism-in-sport
Alcohol

Many Australians enjoy alcohol. Increasingly, however, the negative consequences of alcohol use are now being recognised. At an individual level, excessive use of alcohol can negatively impact a person’s health and wellbeing and at the broader club or association level it can damage an organisation’s reputation and integrity.

Negative associations from ‘drinking’ cultures can affect sponsorship opportunities and may create negative role models and a culture of inappropriate behaviour. Sporting organisations are often where young people look to find role models and where potentially lifelong attitudes are established.

As such, it is important for your organisation to promote the responsible consumption of alcohol. Not only can this help create a culture that brings the focus back on the sport and encourages junior and family involvement, but promoting responsible drinking can also help reduce the risk of poor behaviour (e.g. alcohol-fuelled violence, property damage, etc.). Organisations with liquor licences have a legal responsibility to serve alcohol responsibly, but even those without licensed premises can help promote positive attitudes towards drinking.

For an example of an alcohol policy, refer to the Play by the Rules Alcohol Policy Resource.

Non-profit organisation

The following section assumes that your organisation is a non-profit organisation.

The Australian Tax Office (ATO) defines non-profit as ‘an organisation that is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect. This applies both while the organisation is operating and when it winds up. Any profit made by the organisation goes back into the operation of the organisation to carry profit made by the organisation goes back into the operation of the organisation to carry out its purposes and is not distributed to any of its members’.

The ATO advises that it accepts an organisation as non-profit where its constituent or governing documents prevent the organisation from distributing profits or assets for the benefit of people – both while it is operating and when it winds up.

Key point: A non-profit organisation can still make a profit, but it must be used to carry on its purposes and must not be distributed to owners, members or other organisations.

Example of a non-profit organisation: An organisation makes a $50,000 profit for the year. It uses this profit to reduce its debts and provide for its activities in the following year.

Regulatory compliance

Taxation Compliance

Taxation compliance is about effective risk management of one of the biggest risks to your organisation – regulatory non-compliance.

Key point: Your organisation should actively promote the responsible consumption of alcohol.
Non-profit organisation

Income Tax Exemption

Whether a non-profit organisation has to pay income tax will depend on whether or not the organisation is exempt from income tax.

As per the ATO’s publication ‘Tax basics for non-profit organisations’, only certain categories of organisation are exempt from income tax. They come from the following broad groupings:

- community service organisations
- cultural organisations
- educational organisations
- employment organisations
- health organisations
- resource development organisations
- scientific organisations
- sporting organisations.

Organisations that are not charities can self-assess their entitlement to income tax exemption. They do not need to be endorsed by the ATO to be exempt from income tax.

The ATO’s publication ‘Income tax guide for non-profit organisations’[^97] helps non-profit organisations work out if they are exempt from income tax.

As per the ATO website[^98], if you work out that your organisation meets all the requirements for income tax exemption, the following applies:

- your organisation will not need to pay income tax, capital gains tax or lodge tax returns unless specifically asked to do so
- your organisation does not need to get confirmation of this exemption from the ATO
- your organisation should carry out a yearly review to check if it is still exempt – your organisation should also do this when there are major changes to the organisation’s structure or activities.

Other Tax Issues

For an overview of further tax issues that may affect non-profit organisations, refer to the ATO information booklet titled ‘Tax basics for non-profit organisations’.

This guide explains an extensive range of matters including:

- which taxes and concessions affect non-profit organisations
- how you work out if your organisation is exempt from tax
- the organisation’s tax obligations
- directions on where you can find more detailed information; for example, applying for an ABN, registering for GST and other taxes.


Registering for GST

You must register for GST if you run a business or enterprise and your GST turnover exceeds the threshold amount. At the time of releasing this publication, the threshold for non-profit organisations is $150,000. While an organisation has a responsibility to register for GST if turnover exceeds the relevant threshold, it also has an obligation if it is likely to exceed the threshold and the organisation is not registered for GST.

If you are not registered for GST, check each month to see whether you have reached your threshold. You must register within 21 days of reaching the threshold. If your GST turnover is below the threshold, registering for GST is optional. However, if you choose to register, you generally must stay registered for at least 12 months.

If your organisation is under the threshold, the main benefit of registering for GST includes the ability to claim back the GST credits on expenses or on any goods purchased by the organisation. This is often helpful for organisations whose expenses are high and their income is low or GST-free.

As with all tax issues, it is recommended that you seek professional advice about whether or not your organisation should register for GST.

Checklist

The ATO has produced a self-governance checklist for non-profit organisations to help with identifying and managing their tax and superannuation compliance risks and other risks that may affect an organisation’s reputation and work.

The checklist can be found at the Australian Taxation Office website.


For additional assistance with taxation matters, visit the Australian Taxation Office’s non-profit section on the website.

Compliance - Other

In addition to taxation compliance, your organisation is subject to a range of other laws and regulations as noted throughout this resource.

Key legislation that your organisation needs to comply with (irrespective of your organisation’s legal structure) is referenced throughout this resource (refer to the section titled Legal Risk, Key Concepts and Legislation).

How your organisation is legally structured will affect its compliance with laws and regulations. The legal structure of your organisation may be:

- incorporated association
- unincorporated association
- company limited by guarantee.

You should ensure that you understand all your financial and reporting obligations required under the prevailing Act.

The section titled Financial highlights key financial duties and requirements with respect to your legal structure; the section titled Human Resource identifies a number of compliance requirements with respect to employment law.

Social media

Aside from the known benefits of social media to an organisation in terms of communicating and engaging the wider membership base, social media can also pose a risk to an organisation’s confidential information and reputation. It may also result in legal, regulatory and compliance violations.

All organisations need to be proactive in managing their social media risk. The following is a suggested checklist for organisations to manage their social media risk.

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100 GST credits are a potential amount of money your organisation might be able to claim from the ATO.

## Social media risk

**Checklist of requirements**

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<th>Requirements</th>
<th>Description</th>
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| **Policy review**                                  | • Review all existing policies to determine if social media requirements are covered (for example, employee code of conduct and volunteer code of conduct).  
• Ensure the policies meet legal requirements and are written in simple language so that all officers and members of your organisation understand the requirements.                                                                                       |
| **Social media policy and procedures**             | • Establish whether your organisation has a social media policy.  
• An appropriate policy will outline what is acceptable and unacceptable behaviour and regulate employee, volunteer and officer activity.  
• Ensure the policy is written in plain language.  
• Example best practice disclosures\(^{102}\) include:  
  - email communications and text message to members who are minors (must also include the member’s parent/guardian)  
  - organisations using Facebook must only accept members of the organisation as their online ‘contacts’ on the club Facebook (or other social networking site) page.                                                                                                                   |
| **Disciplinary and termination procedures**        | • The social media policy for your organisation should include the consequence of breaching the policy.  
• These consequences will need to be clear for the various categories within the organisation (i.e. employee, volunteer, member, etc.).                                                                                                                                                                                     |
| **Governance**                                     | • Assign roles and responsibilities for managing your organisation’s social media, social media risk and compliance requirements.                                                                                                                                                                                                           |
| **Monitor**                                        | • Monitor content posted on the Internet about your organisation by setting up a ‘Google alert’.                                                                                                                                                                                                                                         |
| **Training and education**                         | • Consider educating all employees, officers, volunteers, etc.  
• This will provide the organisation with an opportunity to communicate what is acceptable and what is not.                                                                                                                                                                                                                               |
| **Review**                                         | • Assign responsibility to a knowledgeable individual to review the social media landscape in terms of changes in technology, applicable law and working practices.                                                                                                                                                                               |
| **Advice**                                         | • If necessary, obtain expert advice on implementing social media programs for the benefit of your organisation.                                                                                                                                                                                                                           |
| **Terms and conditions**                           | • Read and understand the terms and conditions of the social media platform your organisation will be using.                                                                                                                                                                                                                             |
| **Insurance**                                      | • Review insurance coverage to ensure it is appropriate for your organisation’s social media activities.                                                                                                                                                                                                                                 |

\(^{102}\) Refer to: http://www.englandnetball.co.uk/make-the-game/safeguarding/club_safeguarding_resources/social-media-good-practice-guide
Key risks – knowing what they are and how they can be managed cont.

Social Media - Useful Websites and Other Resources

Example policies
- Life Saving Victoria
- Ferntree Gully Eagles

Templates
- Example Social Media Policy

Other
- Play by the Rules - Social Media Toolkit

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