



Insurance Information Sheet Association Liability Insurance Who needs it?

This information sheet considers the risks faced by associations and their boards or management committees in carrying out the organisation's activities. Attention is drawn to the increased legal requirements in the Associations Incorporation Act, 2009. Association liability insurance is defined and the types of insurance included in an association liability package are described. There is also a list of useful resources.

The effectiveness of a not for profit organisation is very much dependent on the effectiveness of its voluntary board. A board position carries significant obligations and duties and it is important to attract the right people for the job. Sometimes, however, things can go wrong. A responsible organisation will have in place strategies to protect the organisation and the board for when someone makes a mistake.

Not for profit (NFP) and charitable associations provide invaluable services to the community but an association's benevolent rationale is no protection against the legal liability it may occur in providing those services. The risks faced by associations have increased significantly in recent years through increased government regulation and a greater awareness of legal rights amongst members of the public. It is not just the association that faces these risks. Under certain circumstances the individuals on the board of management or management committee carry personal responsibility for their actions or for their failure to act.

In addition, the new Associations Incorporation Act, 2009 has increased the legal requirements for organisations and provides tougher penalties for board members for a range of offences including:

- Conflict of interest
- Misuse of knowledge gained on Board
- Misuse of position on Board
- Trading while insolvent
- Complicit involvement.

In order to reduce the risks of something going wrong it is therefore essential that the members of the management committee understand their role and know and respect the laws that describe their duties and responsibilities.

What sort of things can go wrong?

A few hypothetical examples can illustrate the problems¹:

- An organisation collapses with debts of \$255 million dollars. The collapse was largely due to fraud by one of the directors. A bank, one of the creditors, sued each of the directors on the board for failure to conduct routine audits. The chairman had a \$97 million judgement made

¹ These examples are condensed from *What is Association Liability?* Aon Risk Services

against him because he signed the annual financial statement stating that the organisation was solvent when in fact it was not.

- An employee is sacked by the board and files suit alleging discrimination on the basis of age.
- A potential volunteer files suit alleging that his request was denied because of false rumours that he had been convicted of child molestation.
- Another organisation files suit for libel after an article criticising the organisation appears in an email bulletin.
- A member of the board is sued for allegedly using the organisation as a business conduit to benefit himself.
- An employee files suit alleging the security guard sexually imposed on her and that the board members were negligent in the selection of the guard.
- A volunteer lost sight of a client on a day trip. The client attempted to assault a child. The parents file suit for damages.

Naturally, organisations and their management will put appropriate actions in place to minimise the threat of litigation but, even if the allegations of wrongful conduct² are disproved, costs associated with litigation can cause financial devastation. In addition, the appropriate insurance may provide assistance and support to protect the assets and reputation of the association and of the management.

Association Liability Insurance

Association liability insurance is a package of insurances designed to protect an organisation and its directors for liabilities that arise out of the work of the organisation. It is similar in nature to policies that protect other professionals, such as lawyers, accountants and doctors. Any association, director, officer or employee who gives advice, offers services or acts in a managerial capacity could be exposed to claims against them alleging a wrongful act. Association liability provides cover for the legal expenses of defending claims and cover for the personal liabilities that may be incurred.

The association liability package varies between insurers. There is considerable overlap between the types of insurance and the package provides cover for the “gaps” in the overlap. The package usually includes:

- **Professional indemnity insurance errors and omissions** provides coverage for a breach of professional duty where your failure results in a third party’s financial loss, personal injury or property damage. A breach can include giving wrong advice or information, breaching a ‘duty of care’ to service users, and/or breaching professionally recognised standards of conduct.
- **Directors and officers insurance** covers management committee members, board members and officers by compensating them for legal costs and other losses when they commit or have been alleged to have committed wrongful acts in the performance of their duties.
- **Employment practices insurance** is often offered under Directors and Officers insurance and protects your organisation and its directors and officers against claims and legal costs where employees claim you have acted inappropriately with regard to their employment.

² Wrongful conduct can here be defined as any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty while acting in the capacity of director, officer, employee or volunteer on behalf of the organisation.

- **Fidelity guarantee insurance** protects against loss caused by fraud, dishonesty or misappropriation of cash, cheques or property by your organisation’s members or staff. Your money or burglary policies will not cover these losses.
- **Tax audit cover insurance** covers the cost of appointing an accountant to respond to a tax audit by the Australian Tax Office. This cover may not be provided in some policies.

These definitions are quoted from the NCOSS publication: *Insurance: What’s It All About – A guide for not for profit organisations*. The booklet provides further detail on issues to be aware of when purchasing insurance or looking at methods of risk reduction. The booklet is available from the NCOSS website.³

Association liability insurance does not cover cases where illegal personal profit or advantage is gained or a criminal or fraudulent act is proven. Since Association Liability insurance varies between insurance providers it is very important to read the policy carefully noting in particular the exclusions and definitions and the procedure for making a claim. It is also a good idea to get professional advice on the policy and the level of cover required.

There are many other factors to consider with insurance and this article provides a starting point and general information only. Every organisation’s insurance needs will be different so it is strongly recommended that specific insurance and/or legal advice is sought before making insurance decisions.

Useful Links

- NCOSS Web Site: <http://www.ncoss.org.au/>
- Our Community: http://www.ourcommunity.com.au/insurance/insurance_main.jsp
- The NCOSS book “Insurance: What’s It All About” can be purchased from <http://www.ncoss.org.au/publications>
- The Associations Incorporation Act 2009: <http://www.legislation.nsw.gov.au/sessionalview/sessional/act/2009-7.pdf>
- For general information about associations - the Department of Fair Trading in NSW: <http://www.fairtrading.nsw.gov.au>

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³ See www.ncoss.org.au/publications.