

VWA Clubs and the Law

This section highlights areas of the Law that relate to community organisations and aims to provide general information that will enable clubs to protect their rights and those of their members.

Clubs and the Law

The law is a set of rules that provide a guide for the manner in which activities within both the sport and the club should be carried out.

Community organisations and clubs have legal obligations and responsibilities including:

- Insurance
- Civil and criminal negligence
- Risk management practices
- Contracts and constitutions
- Harassment
- Discrimination
- Food handling and liquor licensing
- Occupational health and safety

Insurance

It is vital that all clubs protect their members, committee, assets and activities with adequate insurance. This includes the areas of:

- Public liability
- Professional indemnity
- Building and contents
- Fire
- Money
- Burglary
- Consequential loss
- Pluvius
- Fidelity

Public Liability Insurance

Public liability Insurance protects employees and members of the club. It aims to provide indemnity to the club against legal liability to pay damages arising from accidental injury (including death) and accidental property damage. This covers claims arising from negligence of the club or one of its employees, and claims based upon the conditions of the premises. It also provides for payment and legal costs related to such claims.

Professional Indemnity

Professional Indemnity Insurance covers persons giving professional advice or imparting skills. This type of policy protects persons from claims made against them for negligent acts, advice, instructions or omissions during work.

Building and Contents

Building Insurance covers damage to buildings through events such as fire and vandalism. Contents insurance will cover against theft of equipment or saleable goods.

Personal Injury

Personal Injury Insurance covers participants for costs associated with injuries acquired during training or competition. In addition to medical and rehabilitation expenses it may cover for loss of income.

The Australian Weightlifting Federation Insurance Policy covering public liability, personal injury and professional indemnity covers all capitated members and affiliated clubs of the Victorian Weightlifting Association. However clubs should cover their premises and equipment. An Insurance Broker can assist your club to establish appropriate insurance at competitive process.

Negligence

The law of negligence is primarily concerned with the “**Duty Of Care**” we owe one another. In a club context negligence is concerned with the duty of care owed to club members, users and the broader community. Negligence occurs when someone does something that a reasonably prudent person would not do, or fails to do something that a reasonably prudent person would do. **(To view the Occupational Health and Safety Act go to: www.dms.dpc.vic.gov.au)**

The following questions should be considered when undertaking any activity for your club:

1. Do I owe a duty of care to the participant and if so is the risk of injury reasonably foreseeable?
2. What is the standard of care that must be achieved?
3. What steps can I take to avoid the foreseeable risk of harm or injury?

(See Risk management section elsewhere in this manual)

Incorporation

What is Incorporation?

Incorporation means joining number of separate individuals into one legally recognised body. Any organisation that owns good or land, enters contracts, holds a liquor licence, borrows money or charges fees to non-members to participate should consider becoming incorporated. The law does not recognise any club or association

as having any legal existence in its own name unless law incorporates it. Incorporation means that the members of the organisation are not personally liable for debts.

Creation of a separate legal entity through incorporation usually protects individuals within the organisation, provided the organisation operates within acceptable business and community standards. With the club having a legal existence it:

- Exists as a separate entity, regardless of changes of membership
- May enter into contracts in its own right, including tenancy agreements or lease agreements
- May own land and other property
- Has the ability to sue and be sued
- May borrow money and accept gifts and bequests.

The most important aspect of incorporation is that office bearers and members are not personally liable for the debts of the club or for negligent acts or omissions of other office bearers and members.

Furthermore, incorporation may often be a prerequisite for obtaining a grant from Local, State or Federal Government while unincorporated organisations are excluded from holding Public Liability Cover.

Constitutions

Your club should have a constitution setting out the member's rights and liabilities. This document establishes a group and sets out the purposes for which it has come together and all the rules under which it proposes to operate.

NOTE: You need a constitution to become incorporated.

As all organisations have different aims and objectives so all constitutions are different. However there are certain common elements that should be included for the protection of members. The constitution should specify:

- Name of the organisation
- Objectives – why the organisation has been established. The aims and objectives should be fairly general, specific plans are not part of the constitution.
- The number of committee members
- The powers of the committee enabling it to manage day to day operations of the organisation
- Whether the Secretary and Treasurer can be one and the same person
- The regularity of meetings, numbers for a quorum, and the manner in which a general meeting can be called. The usual quorum for a committee is one third or one half of the committee members, but it should never be fewer than three.
- Voting method.
- The manner and reasons for a person to be expelled or suspended from the group.
- The manner and circumstances for committee members to be indemnified out of group funds, in the event that they incur any liability on behalf of the club.

- The manner of winding up by way of distribution of assets to members, or conversion of those assets to cash and then distribution.

It is imperative that the constitution is kept up to date by the secretary and is on hand at any meetings for referral. Copies of all amendments should be sent to those people that hold a copy of the constitution.

Model Rules. Can be obtained from the office of Consumer and Business Affairs Victoria.

Discrimination

Because people join community organisation and clubs for numerous reasons it is important that equal opportunity is made an integral part of all activities.

Discrimination is unlawful. It denies people the opportunity to prove what they are capable of. Discrimination is unfair treatment that prevents people from enjoying the benefits of and contributing to the club.

Refer to the sections on Harassment free sport.

Privacy Act

Victorians are protected by three pieces of privacy legislation:

The Victorian Information Privacy Act 2000

The Victorian Health Records Act 2001

The Federal Privacy Act 1988 (extended in 2001)

The Privacy Act 1988 protects the way your personal information is handled by private sector organisations and government agencies. The Act covers the collection, use, disclosure, quality and security of personal information. It also gives the right to access and correct information.

The Victorian Privacy Act 2000 covers all personal information except health information in the public sector in Victoria. This Act adopts ten information privacy principles.

Local councils are subject to this Act and compliance with the principles of this Act was required from 1st September 2001.

The Victorian Information Privacy Act 2000 may not apply to all clubs in the same way. It is advisable to contact the relevant authority to obtain further advice. However the basic principle is to protect and respect the rights of club members by not sharing your club's membership database without individual approval.

For further information contact:

Office of the Federal Privacy Commissioner

www.privacy.gov.au

Office of the Victorian Privacy Commissioner

www.privact.vic.gov.au

Child Protection Legislation

Several states have developed Child Protection Acts. These Acts help to protect the safety and well being of children participating in activities run by organisations.

The Acts include details where it is mandatory for organisations to ask employees, paid and volunteer, in child related employment (e.g. coaches, group leaders) to make and sign a declaration that they are not a prohibited person (someone convicted of a serious sex offence)

For further information regarding Child: Protection Legislation contact the Department of Human Services

Food Handling

There are strict guidelines that govern the handling of food. Community groups and Committees of Management need to be aware of the requirements for the operation and registration of food premises.

Any community group that is selling food, whether that is holding a sausage sizzle, cake stall, running a kiosk or catering for an event, must notify the Council's Environment Health Officer.

The VWA has a policy that commits to the promotion of healthy food options. See the appropriate section in this manual

Liquor Licensing

The Liquor Control Reform Act 1998 aims at ensuring that alcohol is sold responsibly. Under the Act, liquor cannot be supplied or consumed in a club without a liquor licence. Therefore, community organisations wanting to supply alcohol to members and guests of members must hold a liquor licence.

Obtaining a liquor licence is relatively simple.

For further information contact Liquor Licensing Victoria on (03) 9655 6696.