

## Understanding Trust & Organisation Liability

It is important that community organisations and their boards of trustees are aware of their responsibilities and liabilities relating to insurance and risk management. Rene Swindley from Hutchison Rodway has provided this guide to terms and types of insurance to help clarify understanding and assist in deciding what sort of cover works best for your circumstances. Hutchison Rodway are liability risk advisors and insurance brokers. They arrange insurance covers for a number of associations, trusts and organisation in the not-for-profit sector. The information provided is generic and is not intended to be treated as specific advice. As such Hutchison Rodway invites you to contact them to discuss any specific queries you may have.

### **Changing Insurance Market**

Environment of increasing premiums, increasing excesses and changes in policy response. Organisations need to focus on proactively managing risks and preparing for losses.

### **Associations (Trusts, Clubs, Societies, Organisations)**

Have the same level of exposure to risk as profit motivated entities. In many cases the exposure is greater due to the organisation being publicly accountable and they may also provide indemnities to government departments and funders.

### **Employees & Management**

In most cases such persons are protected by the umbrella of the organisation unless acting outside of their authority (known as 'ultra vires')

### **Trustees**

Can be held personally liable for wrongful acts and decisions. Trustees can have more exposure than company directors. Once should undertake due diligence of an organisation before accepting a trustee position. Some questions include: Is the organisation solvent? Are there any outstanding liabilities? Does the organisation have adequate insurance cover in place for both the organisation and trustees.

Acts of Parliament can protect trustees in some sectors but there is a reliance on the interpretation of 'Good Faith'. Even with Statutory Protection it is still prudent to make sure trustees, in their personal capacity, are protected.

## **LIABILITY RISKS – Summary of insurance policies available and the risks they intend on covering.**

### **Public/Generally Liability**

Obligation to compensate a third party for property damage or personal injury for which the organisation has a legally liability. Legal liability needs to be established against the organisation and there are common law principals which determine whether legal liability exists; for example tests around duty of care and whether that duty has been breached.

As such responsibility for moral liability will not be insured, for example where an organisation feels a moral obligation to remedy another party for a tree falling over and damaging property during a storm. Unless the organisation somehow caused or knew of the potential risk, there is no legal responsibility on the organisation.

### **Statutory Liability**

Breaches of legislation and regulation, except for those acts of parliament which the government prohibits insurance cover. Eg Crimes Act, Summary Offences Act and others.

Statutory breaches can incur significant legal costs, fines and reparation. Insurance will not indemnify the fine. Common breaches include, Health and Safety in employment and breaches of environmental regulation.

The implementation of the Worksafe New Zealand Act 2013 establishes Worksafe NZ as the governmental agency responsible for the functions of the Health & Safety in Employment Act. The Health and Safety Reform Bill is currently at select committee stage (reporting back by 12 September 2014). As well as changing the terminology used for safety in the workplace, the bill is likely to put more of an onus on organisations to ensure a safe work environment for staff and customers; and Worksafe NZ will have the power to enforce compliance.

It is anticipated that insurers will adapt their Statutory Liability policies so that they are relevant and are in-keeping with changes in legislation. It is also important that organisations are aware of their responsibilities and update their internal processes to suit.

### **Employment Practices Liability**

Liability of the organisation for wrongful acts against employees. Including Harassment, Wrongful Dismissal. Common area for claims. Can be better managed with good processes and systems. Most insurance policies have a higher excess (\$5,000 +) and there are strict conditions around the management and notification of circumstances which may give rise to a claim.

### **Employers Liability**

Different from Employment Practices Liability. Limited situations in which an employee can attempt to recover from the organisation as a result of an injury. ACC legislation makes it difficult to sue for personal injury, however in situations where an organisation has clearly failed in their duty or the employee has suffered a gradual illness / injury the organisation could be help responsible.

### **Fidelity**

Financial loss resulting from theft by employee or officer of the organisation. There is a significant increase in this type of loss. Clubs and trusts are vulnerable. Good systems are essential, such as two or more to authorise payments etc. Insurance cover is available for this risk.

### **Trustees Liability (Professional Indemnity)**

As per above, trustees can be held personally responsible. Such a policy can cover trustees personally from attacks from third parties. Claims could come in the form recovery of financial losses (including insolvency), tax errors and legislative breaches, errors or omissions in advice.

### **Association Liability (Professional Indemnity)**

This policy is designed to cover the organisation for attacks from third parties who have suffered a financial loss because they have relied advice from the organisation. Errors or omissions in the advice provided by the organisation itself (ie one of its employees) may cause loss to third parties. The insurance is intended to cover the defence costs incurred by the organisation and any damages awarded against the organisation.

For example; a high performance sports club provides financial advice to one of its athlete members who was considering entering into a sponsorship / endorsement deal with another organisation. Errors in this advice lead to the athlete incurring significant legal costs in defending himself from an action by the sponsor. The athlete attempted to recover from the organisation. A settlement was reached.



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