

TIPS FOR THE TOOL KIT

Understanding Trusts & Organisation Liability

It is essential that community organisations and their board of trustees are aware of their legal responsibilities and liabilities relating to insurance and risk management. Frank Risk Management has provided this helpful guide on the types of insurance to clarify understanding and assist in deciding what type of cover works best for your circumstances. Frank Risk Management are liability risk advisors and insurance brokers. They arrange insurance coverage for associations, trusts and organisations in the not-for-profit sector. The information provided is generic and is not intended to be treated as specific advice. As such, Frank Risk Management invites you to contact them to discuss any specific queries you may have.

Changing Insurance Market

We are in an environment of increasing premiums, higher excesses, and frequent changes in policy response. Organisations need to focus proactively on managing risks and preparing for losses.

Associations (Trusts, Clubs, Societies, Organisations)

Associations 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, employees and management are protected by the umbrella of the organisation unless acting outside of their authority (known as 'ultra vires')

Trustees

Trustees can be held personally liable for wrongful acts and decisions, and they can have more exposure than company directors. Trustees should undertake due diligence on 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 coverage 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 to cover.

Public/General Liability

General Liability covers the obligation to compensate a third party for property damage or personal injury for which the organisation has a legal liability. Legal liability needs to be established against the organisation. Common law principles determine whether legal liability exists, such as 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

A Statutory Liability policy covers the organisation for unintentional breaches of legislation and regulation, except for those acts of parliament in which the government prohibits insurance coverage, such as the Crimes Act, and the Summary Offences Act. Statutory breaches can incur significant legal costs, fines, and reparation. This includes cover for defence costs and reparations under the Health & Safety at Work Act. Insurers are not allowed to cover fines under the Health & Safety at Work Act. Worksafe NZ is the government agency responsible for the functions of the Health & Safety at Work Act. Organisations must be aware of their responsibilities and update their internal processes accordingly.

Employment Practices Liability

Employment Practices Liability covers the organisation's liability for wrongful acts against employees, including harassment and Wrongful Dismissal. This is a common area for claims that the organisation can manage with good processes and systems. Most insurance policies have a high excess (\$5,000+) and there are strict conditions around the management and notification of circumstances that may give rise to a claim.

Employers Liability

Employers' Liability differs from Employment Practices Liability. Employers liability covers the organisation for sums that they become liable to pay arising from your employee sustaining an injury, which is not covered by the Accident Compensation Corporation (ACC). ACC legislation makes it difficult to sue for personal injury; however, in situations where an organisation has clearly failed in its duty, or the employee has suffered a gradual illness/injury, the organisation could be held responsible.

Fidelity/Fraud

Fidelity insurance covers the financial loss resulting from theft by an organisation's employee or officer. This type of loss has significantly increased. Clubs and trusts are vulnerable. Having good systems in place is essential, such as two or more people to authorise payments, etc.

Trustees Liability

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

Association Liability

The Association Liability policy is designed to cover the organisation from a civil claim from a third party who has suffered a financial loss because they have relied on the organisation's advice. Errors or omissions in the advice provided by the organisation 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 provided financial advice to one of its athlete members who was considering entering 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.

Cyber

One of the biggest threats facing organisations today is the dramatic rise of cyber extortion and ransomware worldwide. The immediate impact of a cyber-attack and its flow-on effects can seriously hinder an organisation's ability to operate. Cyber protection is available to cover an organisation's loss of profits if your IT systems are attacked, third-party liability that arises from hacked personal information, hacker theft, and network extortion including costs to restore systems and deal with demands.