



CAMS CLUB RESOURCE GUIDE

CHAPTER 6: RISK AND INSURANCE



Australian Government
Australian Sports Commission

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MEMBER OF



CONFEDERATION OF AUSTRALIAN MOTOR SPORT

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1. Introduction

The Law and Sports

The law is not separate from sport and recreation. Therefore CAMS affiliated clubs and members are subject to the same legal responsibilities as any other entity.

Increasing levels of commercialisation and awareness of individual rights make legal action in the sport and recreation environment more likely than was the case a decade ago.

It is important that club administrators maintain and try to increase their knowledge of the law, particularly sports law, to protect the rights of the clubs and therefore their members.

Contents of this Chapter

This chapter of the Club Management Handbook sets out a brief overview of the major legal matters affecting clubs and contains information about:

- duty of care
- negligence
- Work Health and Safety (WHS)
- Occupational Health & Safety (OH&S)
- risk management
- insurance

Advice

At all times the content of this document is advice only. Matters that may arise should be referred to the Club's legal advisor.

Elements of Risk in Activities

Many sporting and recreational activities involve an element of danger or risk and certainly motor sport falls into this category, for competitors, officials, spectators and the community in general.

In most cases, participants (competitors and officials) accept the risks as a part of the challenge of participating in the activity.

1. Introduction – Continued

Club Administration Liability It is important for club administrators to understand that there is no automatic legal protection, and that they can be held legally responsible for injuries, or death, that occur in the conduct of activities under their control.

Protection Available from CAMS CAMS provides a wide range of training programs for club members, officials and office bearers. It also provides appropriate insurance products to support clubs if a claim or other litigation is made against the Club.

2. Duty of Care

What is Duty of Care?

Every person owes a 'duty of care' to every other person who is reasonably likely to be injured by that person's actions, or failure to act.

Duty of care is breached by failing to do what is reasonable, or by doing something unreasonable that results in harm, loss or injury to another person/s.

The appropriate standard of care is assessed on what action a reasonable person would take in a particular situation.

Duty of care must be balanced with dignity of risk, which refers to a person's right to experience all that life has to offer, such as learning a new skill or taking part in an activity that may entail some element of risk, but has benefits that might include gaining greater self esteem and independence.

Committee Members Owe a Duty of Care Upon Appointment

Committee members of an incorporated body owe a 'duty of care' once they are appointed. This duty of care is summarised as a duty to:

- act in good faith
- not gain advantage by improper use of his / her position
- not misuse information
- act with diligence and care
- not trade while insolvent

2. Duty of Care – Continued

Dignity of Risk in Assessing the Situation

The likelihood and extent of the foreseeable harm needs to be considered by balancing the harm against the benefits by looking for ways to minimise the risk of harm without sacrificing the benefits of the activity.

Some of the questions that can be asked in determining duty of care are:

- What rights exist here for the person carrying out the activity?
- What rights are at risk of being compromised or abused through the action that one may take?
- What rights would be upheld?
- Are some of these rights in conflict or competition with one another?
- Can the different rights relevant to this situation all be upheld or must one make choices between them?
- If there is a conflict or tension between these rights then is one clear about why one is choosing to emphasise one rather than the other?
- Whose values are influencing one's judgement—one's own or the other persons?
- To what extent is one involving the person carrying out the activity in balancing up these issues?

Factors to be Considered in Situations

In situations of potential harm some factors to be considered are:

- the likelihood of harm
- types of injuries that could be incurred
- assessment of the seriousness of those injuries
- what action can be taken to minimise the risk
- what action can be taken to reduce the seriousness, or harm, of the injury
- current standards about the risk issues
- the usefulness of the activity involving the risk

2. Duty of Care – Continued

Harm

Harm can be injury, hurt, damage by means of being:

- physical
- psychological

3. Negligence

What is Negligence?

Negligence is considered as conduct that falls below the standards of behaviour established by law for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances.

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.

Questions

When undertaking any activity associated with the Club, administrators should consider the following questions:

- Do we owe a duty of care to the participants and if so, is the risk of injury reasonable foreseeable?

A duty of care depends on establishing some relationship between the parties. If an injury occurs, the courts will ask whether the relationship between the parties was such that the defendant should have foreseen that his negligent act would lead to the damage suffered by the participant.

3. Negligence – Continued

Questions (continued)

- What is the standard of care that must be satisfied?

The test for the required standard of care is how a reasonably prudent person would have behaved in the same situation. The law has developed this reasonable person test but what is reasonable will depend on the particular circumstances existing at the time. The standard may vary depending upon the following:

- The type of activity. Generally the more hazardous or risky the activity is deemed to be, the greater the duty of care that is owed to the participants.
 - The age of the participant. Generally, the younger the participant, the greater the duty of care that is owed. The same applies to frail or aged adults. Both place greater demands on higher levels of supervision.
 - The ability of the participant. Age should not be considered in isolation, but considered with the ability of the participant. 'Beginners' in any program need greater supervision than experienced and skilled participants.
 - The administrators' level of training and experience. The more highly trained and experienced a person is, the greater the standard of care that is expected.
- What steps can be taken to avoid the foreseeable risk of harm or injury?
 - Administrators may not be able to take all possible steps to avoid causing injury, but the law requires them to take all reasonable steps. To help establish those 'reasonable steps' the administrator should develop a risk management plan for the Club and the activities it conducts.

4. Work Health and Safety (WHS)

What is Work Health and Safety?

The Work Health and Safety Act was legislated in 2012, and the states and territories have harmonised their laws with this act but they retain responsibility for regulating and enforcing work health and safety laws in their jurisdiction.

WHS is concerned with the safety, health and welfare of people engaged in work or employment, and this includes activities conducted by sporting organisations such as car clubs.

Clubs and the Work Health and Safety Law

Many clubs have legal responsibilities and duties under the WHS laws, although not all. Please identify your club as one of the following:

- Person Conducting a Business or Undertaking (PCBU)

If a club employs paid workers it is referred to as a PCBU and under WHS laws has responsibilities and a legal 'duty of care' to workers (paid and voluntary) to protect the health and safety of people affected by the activities of the Club.

This includes people who work for the Club on a full-time, part-time or casual basis; and includes volunteers plus members of the public while they are in the workplace.

- Volunteer Association

If a club does not employ any paid workers (but only has volunteers), it is classified as a volunteer association and does not have any responsibilities of a PCBU under WHS laws.

Volunteers who work for a volunteer association (i.e. a club) that has an affiliation with a state or national body who is a PCBU (e.g. CAMS) are covered under the act through affiliation to this body.

Thus CAMS carries out the requirements of the act by handing down measures to its clubs to protect the health and safety of people affected by their activities.

Note: Even if a club is a PCBU the fact of the Club being affiliated with CAMS does not limit CAMS responsibility for the duty of care to all workers (paid and voluntary) engaged by the Club.

4. Work Health and Safety – Continued

Steps to Improve Health and Safety in the Workplace

All clubs should take these simple steps as a guide:

Step 1 – Commit to workplace health and safety

- Understand WHS duties that apply to the Club.
- Know who has specific responsibilities.

Step 2 – Plan to work safely – gather information

- Think about the activities carried out by the Club.
- Identify the hazards.
- Assess the risks.
- Identify the tasks and procedures to control the risks.

Step 3 – Consultation

- Discuss safety issues in formal arrangements (such as meetings).
- Involve people in safety decisions.
- Ensure the views of volunteers are valued and taken into account.

Step 4 – Develop procedures using consultation and risk assessment

- Develop and implement procedures for reporting safety issues and incidents.
- Review safe work procedures and training after incident reports.
- Refer to the CAMS 'Targeted Risk Assessment' on the CAMS website.

Step 5 – Incident Notification

- Clubs are required to notify the relevant state safety regulator if any notifiable incident occurs as a result of club activity, if there is:
 - the death of a person
 - serious injury or illness of a person
 - a dangerous incident
- In the first instance CAMS is to be notified and advice sought on action to be taken.

4. Work Health and Safety – Continued

Steps to Improve Health and Safety in the Workplace (continued)

Step 6 – Inform and train staff, workers and volunteers

Club Committees should ensure that all staff, workers and volunteers:

- Are inducted.
- Can demonstrate they can perform their tasks safely.
- Are trained in safe work practices and understand procedures.

Step 7 – Monitor and review

Work Health and Safety Reference Document

Clubs should refer to Safe Work Australia’s website at www.safeworkaustralia.gov.au which provides a Volunteer Resource Kit.

5. Occupational Health & Safety (OH&S)

What is Occupational Health & Safety?

Occupational health and safety is concerned with protecting the safety, health and welfare of people engaged in work or sport.

The enjoyment of these standards at the highest levels is a basic human right that should be accessible by each and every participant.

Regardless of the nature of their involvement, participants should be able to carry out their responsibilities in a safe and secure working environment, free from hazards.

These rights are set out in legislation to ensure that employers and sport administrators are clear about the obligations and the consequences for neglecting them.

What Does Occupational Health & Safety Cover?

Occupational Health & Safety (OH&S) is the general area of concern in employment or sport which covers the physiological and psychological well-being of participating persons.

Employers / administrators have a common law duty to take reasonable care to guard health and safety at activities under their control.

Under the law in every state, 'employment' has the widest possible meaning, which includes volunteers, competitors, officials, suppliers and the like.

OH&S and Motor Sport

'Employment' is extended to cover sport and 'employers' to the administrators involved with sport.

CAMS OH&S Policy can be found on the CAMS website.

6. Risk Management

What is Risk Management?

Risk management is a technique which has been developed by which the Club or individuals can identify potential risks, assess the possible outcomes of these risks, predict the probability of them occurring, and design appropriate treatments. The fact of having conducted a competent risk management assessment can be a very powerful tool by which the Club can demonstrate that it has behaved reasonably and responsibly.

Purpose of Risk Management Program

A club's risk management program is to protect the assets and financial resources of the Club and its members by reducing risk and potential for loss.

There is a constant need for club administrators to identify risks, deal with them and then evaluate whether the strategies that are subsequently implemented are effectively dealing with the risk.

CAMS is committed to delivering motor sport via best practices resulting in the highest levels of safety and urges all affiliated clubs to ensure that risk management and safety are embedded into the culture of the Club. It is critical that the various risk management policies and procedures produced by CAMS are embraced and applied to all club activities. In addition, clubs must actively assess the risk involved in every activity they conduct, some of which may be unique and not addressed by generic procedures of the sport, and take appropriate action to ensure a safe sporting experience.

Negligence – Continued

Risk Definitions

Some definitions associated with risk are summarised in the following table:

Concept	Definition
Risk	The chance of something happening that will have an impact upon objectives. It is measured in terms of likelihood and consequences.
Risk Management	The culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects.
Risk Reduction	A selective application of appropriate techniques and management principles to reduce either the likelihood of an occurrence or its consequence or both.
Risk Transfer	Shifting responsibility or burden of loss to another party through legislation, contract, insurance or other means.
Risk Acceptance	An informed decision not to become involved in a risk situation.

6.1 CAMS Safety 1st Strategy

CAMS Safety 1st Strategy

In order to fulfil CAMS obligation to its own Safety 1st Strategy, there is the need to identify and treat risks in a common manner, and comply with the legislative requirements of the OH&S / WHS Acts.

CAMS has, through wide consultation with its members, established both a process and a form to record the identification, ranking, and control, and checking of risks in motor sport held under its auspices.

The 'form' which will be used to record risks is the 'Targeted Risk Assessment' form.

It is important that this form be filled out in a common, and logical manner. This paper has been assembled to assist the understanding, and logic behind the form, and to assist in the process of assessing risks.

Assessment of risk can be undertaken in different ways, depending upon the experience, information, time and other resources that are on hand.

Most assessments will be undertaken using a 'qualitative assessment' method, which means they will be based on information gained primarily through CAMS training, and experience of the matter at hand, rather than reference to statistics and mathematical probability.

6.1 CAMS Safety 1st Strategy – Continued

Who Completes a Targeted Risk Assessment and When?	<p>Who completes a Targeted Risk Assessment (TRA)?</p> <ul style="list-style-type: none"> ○ CAMS staff ○ compliance checkers ○ safety representatives ○ event officials (race, rally, off-road, karting, etc.) ○ circuit, raceway or venue staff ○ club members <p>When is a TRA completed?</p> <ul style="list-style-type: none"> ○ at any time in the planning, setting up and during the actual activity itself ○ not forgetting the dismantling process of the activity.
Understanding and Completing Targeted Risk Assessments	<p>An 'Understanding and Completing Targeted Risk Assessments' document, together with a 'Targeted Risk Assessment' form, is available on the CAMS website.</p>

7. Insurance

7.1 Introduction

CAMS Insurance An *Insurance Program Handbook* is available through the Insurance link on the CAMS website at: <http://www.cams.com.au/about/our-services/insurance>

The aim of the booklet is to provide assistance to clubs and their members an understanding the scope of the cover provided and the actions required in the event of an incident or injury. This is however only a broad summary of cover and full details of the policy terms, conditions and exclusions are found in the insurance policy wordings.

For all insurance enquiries, affiliated clubs are best served to contact Arthur J. Gallagher, to discuss matters in more detail. Arthur J. Gallagher's contact details can be accessed through the CAMS section of their website: <http://www.ajg.com.au/associations/cams>.

Types of Policies Required

It is vital that clubs protect their own assets with adequate insurance.

There are various types of insurance policies that a club needs; both a standalone and those offered by CAMS in Group Policies.

Any information provided on these pages does not supersede the official insurance documents held by CAMS or a club.

7.2 Combined General Public and Products Liability Insurance

What Does it Cover? Combined General Public and Products Liability Insurance is a very important form of insurance for a club.

It protects the Committee and club members. It provides indemnity against claims brought against the Club for legal liability for damages arising from an accident that has caused bodily injury or damage to property.

CAMS provides this coverage through its permit and licensing system.

Who is Covered? Affiliated car clubs, their members, their officials and their volunteers, as well as competitors are indemnified under this insurance.

Amount of Cover The amount of cover is:

- General Liability: Check the current Certificate of Insurance or contact Arthur J. Gallagher.
- Products Liability: Check the current Certificate of Insurance or contact Arthur J. Gallagher.

What is Covered? Cover is provided for claims arising out of:

- personal injury
- property damage
- product liability
- advertising liability

Additional details are available at the CAMS website.

7.2 Combined General Public and Products Liability Insurance – Continued

When is Cover Applicable?	<p>Cover is applicable during:</p> <ul style="list-style-type: none"> ○ motor sport activities sanctioned / permitted by CAMS ○ non-motorsport activities, including committee and club meetings, social gatherings, fundraising activities, working bees, and non-timed assembly drives and general club activities
Excess	<p>A property damage excess applies for all club to state championship events and includes the following:</p> <ul style="list-style-type: none"> ○ rallying ○ racing ○ motorkhanas ○ sprints ○ static displays <p>Greater excesses exist for higher level events.</p> <p>The excess is borne by the clubs.</p> <p>To find out the value of the excess, please contact Arthur J. Gallagher.</p>
Contractors / Sub-Contractors / Goods and Service Providers	<p>The CAMS policy does not provide for third parties persons or organisations for liability they may incur.</p> <p>Affiliated clubs are advised to contact Arthur J. Gallagher to discuss this matter in further detail. Specifically to determine what information / verification they would require from Contractors / Sub-Contractors / Goods and Service Providers prior to entering into any arrangements with them.</p>

7.3 Professional Indemnity Insurance

What Does it Cover?	Professional Indemnity Insurance protects the Club and club members for claims made against them for negligent acts, advice, instructions or omissions. CAMS provides coverage through its permit and licensing system.
Amount of Cover	Check the current Certificate of Insurance or contact Arthur J. Gallagher.
What is Covered?	The insurance provides cover for breach of professional duty arising to third parties.
When is Cover Applicable?	The cover is applicable at: <ul style="list-style-type: none">○ those events for which a CAMS permit is issued○ advice which is given by any member, official or volunteer whilst acting in his capacity as a motor sport official

7.4 Personal Accident Insurance

What Does it Cover? Personal Accident Insurance protects an individual against any disabling injuries suffered as a result of an accident which occurs in a motor sport activity.

CAMS provides coverage through its permit and licensing system.

Who is Covered? There are three categories of persons covered:

- Category 1: drivers, co-drivers, crew members, pit crew and service crew.
- Category 2: authorised officials of the insured, i.e. club / organiser.
- Category 3: accredited photographers.

Additional Units of Insurance Up to five (5) additional units of personal accident insurance are available to competitors. For details see the Insurance link on the CAMS website.

Amount of Cover & What is Covered The amount of cover is too detailed to list in this summary – refer to the Insurance link on the CAMS website.

When is Cover Applicable for Category 1? Cover for Category 1 is applicable whilst participating in any motor sport event (at all levels), including whilst engaged in official practice sessions; extended to unofficial practice provided a written application has been accepted by the track owner.

- For licensed track events the cover commences from when a person reports in prior to the start of any competition in which that person is involved; and finishes at the end of the event.
- For non-track events, cover commences from the time of reporting in prior to the start of competition for that person; and finishes when that person reaches the final destination of the event.

7.4 Personal Accident Insurance – Continued

When is Cover Applicable for Category 2? For authorised officials, the cover commences from the time the officials leaves his normal place of residence or business; and finishes when the person returns to one or other of those locations, provided that person travels 'directly' to that location.

Special Note Additional benefits and increased insurance levels are available by contacting the CAMS insurance broker. Details of this extra cover and contact are available through the CAMS website.

7.5 Voluntary Workers Insurance

What Does it Cover? Voluntary Workers insurance protects volunteers against any disabling injuries suffered as a result of an accident including whilst traveling to and from the Club's meetings and functions.

The cost of the voluntary workers insurance is included in the annual car club affiliation fee.

Who is Covered? All volunteer workers of all CAMS-affiliated car clubs are covered.

What is Covered and Amount of Cover? Bodily injury caused by an accident to a person during the period of the insurance and resulting in any of the injuries specified in the policy.

The information is too detailed to list in this summary. Refer to the Insurance link on the CAMS website for comprehensive information.

When is the Cover Applicable? A person is only covered whilst actually engaged in unpaid voluntary work performed on behalf of the Club / Event Organiser. This includes direct travel to and from or during the voluntary work.

7.6 Directors and Officers / Association Liability Insurance

What Does it Cover?	<p>The Directors and Officers / Association Liability Insurance covers exposure to litigation arising from the provision of service to club members or to the public and non-profit clubs.</p> <p>Clubs and members would be very unwise to take the risk of operating without the security of appropriate protection.</p>
Separate Cover	<p>It should be noted that this policy is quite separate from the CAMS Public and Products Liability Insurance Policy, which also provides valuable protection to affiliated clubs.</p> <p>This cover specifically excludes providing cover for liability arising from injury or damage to property, which is primarily the domain of Public and Products Liability Insurance.</p>
Cost of Cover	<p>CAMS offers coverage at a very reasonable cost. It is not covered in the permit and licensing system.</p> <p>Due to the number of CAMS affiliated clubs, and therefore the potential for pooling of premiums, the cost of the cover has been substantially reduced as compared to the cost involved with each club arranging its own cover.</p> <p>Refer to the Insurance link on the CAMS website for further details.</p>

7.7 Other Insurances to Consider

Additional Insurance to Consider

It is important for a club to provide adequate insurance for its assets, and this can include insurance, such as:

- Directors and Officers and Company Reimbursement Insurance – for club and committee members
- Workers Compensation and Journey Insurance – if a club has employees
- Fire and Extraneous Perils Insurance – if a club owns property, or is legally liable for property
- Computer Insurance, Motor Vehicle Insurance, etc – if a club owns equipment
- Theft of Money Insurance
- Event Insurance for cancellation of major fundraising or event days
- Fidelity Insurance – against theft of money by members, committee or employees (the Association Liability Insurance includes cover for this)

7.8 Claims Procedure

**Source of
Information**

The Claims and Incident Reporting Procedure is set down in the *Insurance Program Handbook* available through the Insurance link on the CAMS website.



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