

Safety and risk management for administrators of Community Sporting Organisations

A guide to the legal and regulatory obligations

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The 'take home' message

There are several legislative and regulatory obligations that apply to Community Sporting Organisations (CSO). These vary between different sporting activities and different contexts. It is important that CSO administrators do their best to familiarise themselves with all relevant legislation and regulations, and to ensure that their organisations act reasonably and where appropriate, proactively to meet their obligations.

This document outlines the legal and regulatory frameworks that CSO administrators in Victoria, Australia, should be aware of. It also sets out the steps administrators can take to manage health and safety risks, and to reduce the likelihood that their organisation will be held liable if something goes wrong.

These steps include:

- identifying and understanding relevant and applicable legal and regulatory requirements
- using internal and external sources of information to identify risks and inform risk management decisions
- developing and maintaining risk management, and health and safety documents and records
- delegating health and safety roles
- communicating effectively and efficiently with all relevant stakeholders about all risk management, and health and safety matters.

By following these steps, administrators should be able to identify and respond prudently to any challenges that arise. This includes knowing when it is appropriate to accept, eliminate, manage or transfer risk. Acting in this way will help the CSO to retain members, reduce injuries, avoid legal consequences, improve performance and develop partnerships.

Seek advice where necessary

The legal and regulatory obligations that apply to CSOs are wide-ranging, often complex, and will depend on the circumstances of each CSO. If CSO administrators need specific or detailed advice they should contact the governing body for their sport, and seek independent professional legal advice.

This document contains legal information, not legal advice. Always consult a lawyer when you need legal advice.

Context

This document outlines and summarises the legal and regulatory obligations imposed on Community Sporting Organisations (CSOs) in Victoria. It provides guidance on what to do to ensure CSOs comply with these obligations efficiently and effectively.

A **Community Sporting Organisation (CSO)** is a body that organises opportunities for people across all ages to participate in a range of sports and organised physical activities in local communities or regions. CSO participants play, participate and train in a variety of locations and venues, including parks, ovals, swimming pools, gymnasiums, community halls, local streets and school facilities.

CSO administrators are usually, but not always, volunteers. They plan and organise the delivery of the activities of sporting organisations. Examples of CSO administrators include presidents, secretaries, treasurers, club 'owners', committee members, coaching coordinators, technical directors and event organisers.

The nature of CSO activities means there are health, safety and risk management challenges for administrators. Administrators are required to ensure that their CSO identifies and manages the risks, meets its health and safety requirements and, in turn, fulfills its legal and regulatory obligations.

The obligations of CSOs will depend on a range of factors. One of these is the level of support and guidance offered by the governing bodies for the sport. Different sports have different governing bodies and structures but typically consist of a regional league or association, a State Sporting Association ('SSA'), a National Sporting Organisation ('NSO') and an International Sports Federation.

Other important factors that affect the legal and regulatory obligations of CSOs include the:

- size and organisational structure of the CSO
- nature of the sporting activity being undertaken
- age and ability of participants and members
- type of venue and facility the CSO uses for training and competition
- arrangements the CSO has to use the venue or facility.

Because of these variables, the obligations of different CSOs may be very different. For example, the obligations imposed on a CSO that takes children on rafting expeditions will be very different to those imposed on a tennis club.

CSO administrators should invest the time and effort required to meet or exceed their obligations to keep participants healthy and safe. This will help to:

- create a positive organisational culture
- reduce the risk of injuries to participants and others (spectators, officials, visitors, volunteers etc) in the organisation
- recruit and retain members and volunteers
- improve participant performance and 'on-field' success
- reduce the likelihood of successful legal action.

Organisational structure

The structure of a CSO is important in any discussion of legal and regulatory obligations. Many obligations (or defences to liability) depend on the legal definition of the organisation or its members. CSO administrators should think carefully about, and be aware of, the legal and regulatory implications of, the structure of their organisation.

The definitions will vary depending on the area of law in question. This section is expressed in general terms based on the most likely structure of CSOs.

The most common organisational structural option for a CSO is incorporation under the *Associations Incorporation Reform Act 2012 (Vic)* ('AIRA'). To be incorporated under this Act, an organisation must not be formed to make a profit for members. Once incorporated, the CSO is a separate legal 'person' and can hold property, enter into contracts, and sue and be sued on its own behalf. Further information and the procedure for incorporation are available through Consumer Affairs Victoria (www.consumer.vic.gov.au).

If a CSO is **incorporated**, administrators are expected to become, and remain, familiar with the relevant provisions of the AIRA, particularly as they relate to things like meeting procedures and whether the CSO should adopt certain replaceable rules contained in the legislation. Administrators should seek independent legal advice if they need help navigating the AIRA.

Remaining **unincorporated** is a risky option and CSOs are often advised to become incorporated by governing and other bodies. The risks associated with remaining unincorporated including the inability of the organisation to act in its own name and the **exposure of members (particularly office-holders) to personal liability**.

Other organisational structural options include:

- private company (registered under the *Corporations Act 2001 (Cth)* (Corporations Act), and regulated by the Australian Securities and Investments Commission (ASIC)
- company limited by guarantee (registered under the Corporations Act and regulated by ASIC); or
- co-operative (registered through Consumer Affairs Victoria).

A company limited by guarantee may be the most appropriate structure for a larger organisation. This is because larger organisations are better equipped to meet the reporting requirements and are more likely to conduct operations between states.

Age of participants

The age of participants is important when considering legal and regulatory obligations. Some obligations arise *because* participants are children and duties may be heightened or made more stringent as a result.

Under the *Working with Children Act 2005 (Vic)* (WWCA) an adult is required to undergo a Working with Children Check (WWCC) if they engage in “child-related work”. “Child-related work” includes: work for a club or association of a sporting nature or coaching services specifically for children.

A person is not required to undergo a WWCC if they are acting as a volunteer **and** their child is participating or normally participates in the relevant activity. Nevertheless, it is wise for administrators to screen everyone and ask them to undergo a WWCC before appointing them to a position involving regular and unsupervised contact with children. Screening may include asking for character references or conducting a police check. It is particularly appropriate to screen anyone who is unknown or new to the organisation, or if the person will have access to the CSO’s money, equipment or sensitive information.

Facility use

The arrangement that a CSO has with the provider of the facility that the CSO uses is an important legal consideration for administrators. The CSO may own the facility, have a permit, have a licence or be part of a management contract. CSOs also often share a facility with another organisation or organisations. The arrangement between the facility provider and the CSO is important because:

- it will have consequences for the insurance coverage that should be obtained by the CSO
- the CSO may have duties (for instance, of maintenance) under a lease
- the CSO may have obligations to maintain safe premises under statute
- the arrangement may alter the potential liability of the CSO in negligence.

It is crucial for CSO administrators to be familiar with the facility use arrangement. For instance, the operators of an aquatic complex may do so as part of a management contract with the facility owner (e.g. local council). If so, the contract is likely to stipulate that the operators are responsible for the day-to-day maintenance of the facility and the safety of the public. This will be quite different for a CSO (e.g. an athletics or tennis club) that leases a facility from the facility owner (e.g. the local council). Under this sort of arrangement, the club will use the facility at particular times on certain days of the week.

As a part of this, the lease arrangement is likely to require the club to do minor things like inspect the facility before using it, report maintenance requirements to the facility owner, lock the entrance gate, turn off the floodlights and keep the change rooms clean. However, the maintenance obligations will sit principally with the facility owner. This means that the facility owner, and not the CSO, will be primarily responsible for occupant safety.

This responsibility will require the facility owner to maintain things like fences, emergency signage and bathroom facilities.

However, there are instances where the facility owner and the CSO will hold joint responsibility (and consequently be exposed to joint liability). Administrators should ensure they are familiar with their facility use arrangement and be proactive in maintaining a safe facility and communicating with the facility owner, even if direct responsibility sits with the owner.

In addition, a CSO may be part of **conditional arrangements** where one party must do something for another in order to be entitled to a benefit or enjoyment. This may apply where a CSO has agreed with another party (e.g. the facility owner, insurance company or the sport's governing body) to do certain things before CSO-endorsed activity can be undertaken. This may include:

- providing sufficient safety equipment for participants
- covering posts used for games with protective padding
- cancelling or modifying activities in extreme weather
- conducting safety inspections before using a facility.

If the CSO has entered into some form of conditional arrangement and fails to abide by a condition, it may be solely liable if an incident occurs. Administrators should be aware of any conditional arrangements associated with using a facility or undertaking an activity, and do everything reasonably practical to ensure each condition of the arrangement is met.

What you need to know about

Become aware of legal and regulatory obligations including:

Legislative acts and regulations

- Associations Incorporation Reform Act 2012 (Vic) (see Organisational Structure, page 4)
- Working with Children Act 2005 (Vic) (see Age of participants, page 5)
 - > Working with Children Act 2005 (Vic)
 - > Commission for Children and Young People Act 2012 (Vic)
 - > Child Wellbeing and Safety Act
- Privacy and Data Protection Act 2014 (Vic) and Privacy Act 1988 (see page 8)
- Occupational Health and Safety Act 2004 (Vic) and the Occupational Health and Safety Regulations (see page 8)
- Equal opportunity and anti-discrimination (see page 9)
 - > Equal Opportunity Act 2010 (Vic)
 - > Sex Discrimination Act 1984 (Cth)
 - > Racial Discrimination Act 1975 (Cth)
 - > Disability Discrimination Act 1992 (Cth)
- > Australian Human Rights Commission Act 1986 (Cth)
- > Age Discrimination Act 2004 (Cth)

Liability in tort, common law and the Wrongs Act

- Negligence (see page 10)
 - > duty of care (see page 10)
 - > non-delegable duty (see page 11)
 - > vicarious liability (see page 11)
 - > contributory negligence (see page 11)
 - > voluntary assumption of risk (see page 11)
 - > contractual exclusion clauses (see page 11)
- Occupier's liability (see page 12)
- Professional liability (see page 12)
- Trespass against the person (see page 13)

Other regulations

Regulations and policies of:

- sports governing bodies (see page 13)
- relevant insurers (see page 13)
- facility providers (see page 13)

Legislative Acts and Regulations

Privacy

Many CSOs collect personal information about their participants and members, including contact details, financial details, and medical or health-related information. Obligations in relation to this information may arise as a result of a contract between participants and the CSO, or under an obligation of confidentiality arising in tort or equity; but they will typically arise from legislation. There may also be codes of conduct or codes of practice to which the CSO may be bound.

The most common obligations arise from legislation. The *Privacy and Data Protection Act 2014* (Vic) covers certain organisations in Victoria (including Councils and some organisations providing services under State contracts). The *Privacy and Data Protection Act* stipulates that organisations covered by the Act (mostly public sector organisations) must not do an act or engage in a practice that contravenes the privacy of personal information collected, held, managed, used or disclosed by it. Administrators should contact the Commissioner for Privacy and Data Protection (www.cpdp.vic.gov.au/) if they have any questions or concerns.

The *Privacy Act 1988* (Cth) applies to larger Australian organisations. This may include a not-for-profit organisation if it falls under the definition in the Act. A new bill is being tabled in federal parliament that will include criminal sanctions for disclosure of information that is likely to result in “serious harm”.

CSO administrators should not distribute personal information of members or participants to anyone who does not usually receive such data. In addition, they should not publish pictures or names of members without consent of the individual or their parent or guardian. Communication between the CSO and members should be done with care. Storage of personal information should be considered carefully. Particular attention should be paid to protecting the personal information of junior participants and those with a disability.

Occupational Health and Safety

An organisation with one or more employees is classified as a workplace and must abide by the requirements of the *Occupational Health and Safety Act 2004* (Vic) (OHS Act) and the Occupational Health and Safety Regulations (OHS Regulations). The OHS Act defines an employee as: “a person employed under a contract of employment or contract of training”. This definition includes anyone engaged in professional services and anyone paid more than reimbursement of out-of-pocket expenses. However, independent contractors (like an electrician hired to fix a defective fuse box) are not employees.

Given the broad definition of an employee, it is quite possible that a CSO will have one or more “employees” (including: players, coaches, trainers, medical officers, finance officers, administrators, canteen or social club managers etc).

Factors that suggest a person is an employee of the organisation include:

- work is performed under the control, direction and supervision of the organisation
- the hours worked by the individual are set by the organisation
- the individual holds themselves out to the public as being part of the organisation
- the individual is paid for time worked and paid regularly
- the organisation provides the individual with tools to perform their work.

If administrators are unsure whether their organisation has one or more employees, they should seek independent legal advice.

The OHS Act and OHS Regulations stipulate that organisations classified as workplaces owe a range of duties to employees and other people. These include the following:

- eliminate (or reduce if not possible to eliminate) the risks to health and safety as far as is reasonably practicable
- maintain a workplace with safe practices (including training, supervision and instruction) and provide services for employee welfare
- monitor the health of employees and other people and act to ensure safe conditions within workplaces
- not engage in conduct that places another person at the workplace in danger of serious injury
- consult with employees by providing health and safety information and giving employees a reasonable opportunity to express their views on health and safety matters
- notify the safety authority (WorkSafe) immediately if a safety “incident” occurs or if someone was in an immediate risk to their health or safety.

There may be criminal sanctions for failure to comply with these obligations. Administrators in a CSO with an employee or employees should be proactive in becoming familiar and acting on the OHS requirements.

CSO administrators will be liable under OHS, even if they are unaware of their duties under the legislation.

Equal opportunity and anti-discrimination

CSO administrators must be aware of the legal obligations that exist around equal opportunity and discrimination. These considerations are relevant to all members of the organisation and it is wise for administrators to develop a culture of respect, equality and tolerance.

The Acts to be aware of include: *Equal Opportunity Act 2010* (Vic); *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975* (Cth); *Disability Discrimination Act 1992* (Cth); *Australian Human Rights Commission Act 1986* (Cth) and *Age Discrimination Act 2004* (Cth).

This legislation stipulates that organisations must not discriminate on the grounds of age, gender, sexual preference or disability. However, there are exceptions – for instance where it is legitimate to require a participant to have certain characteristics (e.g where they must be of a certain age, disability or gender to participate). There is also an exception where a participant is not be able to participate because team numbers are at capacity. Nevertheless, it is important that team selection decisions are made on merit and not other considerations.

The values of respect, equality and tolerance should be reflected in the CSO’s governing or originating document (often a constitution) and other documents.

If administrators feel their originating document needs to be reviewed, they should contact the Australian Sports Commission (ASC) or their sport’s governing body for assistance. Information about developing member protection, equal opportunity and anti-discrimination policies is available on the ASC’s ‘Play by the Rules’ website (www.playbytherules.net.au/).

Liability in tort, common law and the Wrongs Act

Administrators should be aware of the possibility of a CSO being held liable under one of the common law 'torts'.

A tort is a civil wrong that will typically give rise to compensation. Torts are different from criminal provisions because they relate to obligations owed by individuals to one another – however, the 'individual' could well be an incorporated association such as a CSO.

Torts derive from, and are subject to, changes in the common law. However, the *Wrongs Act 1958* (Vic) will affect the common law principles. The torts most relevant to CSOs are negligence and assault.

Negligence

Negligence refers to the doing – or failing to do – something that results in compensable injury or loss. To be successful in a negligence claim, the following needs to be established:

1. Party A (e.g. the CSO) owes a duty of care to Party B (e.g. a player, coach, employee or spectator, etc.)
2. Party A breaches the duty of care it owes to Party B.
3. Party B suffers injury or loss as a direct result of the breach of the duty of care.

A '**duty of care**' exists where it is reasonably foreseeable that a party's act or omission might harm the other person. In most cases involving physical injury, reasonable foreseeability of injury is usually enough to establish that a duty of care exists.

The courts have already decided that certain relationships 'trigger' a duty of care. Some of the most relevant of these are:

- an occupier's duty to an entrant to avoid risks relating to the state of the premises (see 'occupiers' liability' below).
- an employer's duty to an employee
- a professional's duty to a client to provide services with appropriate care and skill (see 'professional liability' below).

In most cases, the question of duty of care is quite straightforward. There are some more difficult cases, particularly those involving negligent advice or the provision of information services. The reason these are more difficult is that the range of people potentially affected might be wider, so other factors will be relevant, such as whether it is known that the information or advice will be relied upon. Matters such as vulnerability will be relevant, so if children are involved this could be a strong indicator that a duty is owed.

A '**breach**' occurs when a reasonable person would have done – or not done – something to guard against potential injury, and the CSO did or did not do it. For instance, if a reasonable person would have thought it necessary, for the safety of players, to remove a hazard from a playing surface, and reasonable steps were not taken to remove it, then the CSO may have 'fallen below' or breached the required standard of care.

Legislative or regulatory requirements applying to a sport or activity are relevant (although not determinative) of the standard of care required of a CSO. In 2009, a junior Australian Football player suffered a knee injury after colliding with a steel fence that bordered the playing surface. The boundary line was closer than three metres from the fence – the minimum distance required by regulation. In this instance, the local council (as the facility owner) and the community football club (as the facility's tenant) were held jointly liable for breaching their duty of care.

Finally, there must have been some form of **loss or injury** which results from the breach – for instance, a player slipping on or tripping over the hazard who was, as a consequence, physically injured.

An example of this tort in action can be seen in relation to the operators of the Perisher Blue Ski Resort in 1995. One of the dangers at this resort was young people using real estate advertising signs as makeshift toboggans. The ski resort administrators failed to identify this as an urgent risk and did not provide close supervision or warnings. The court deemed that it was a reasonable expectation for the ski resort administrators to attempt to prevent these activities from taking place. When a student was seriously injured, the resort operators were held liable for failing to maintain a sufficiently safe environment.

There are two additional concepts related to duty of care that CSO administrators should be aware of. A **non-delegable duty** is a special duty of care where a person is liable for the negligent conduct of another. The rationale behind this principle is that a 'special relationship' exists. The following criteria need to be met to establish a non-delegable duty:

1. Party B has control or responsibility over Party A or their property.
2. Party A is unable to protect himself/herself/itself to ensure appropriate care is taken.

The 'special relationship' applies to employer/employee relationships and times where people are volunteering, assisting or working for a CSO. For example, a non-delegable duty exists if a parent is asked to supervise a gymnastics competition. Here, the organisation's obligations in relation to participant safety are not transferred to the volunteer because the parent is unlikely to be aware of the relevant legal and regulatory requirements. They are also expected to place trust in following the instruction of others. Therefore, it is important for administrators to provide clear explanations to workers, volunteers and anyone who assists, as it is only in extreme scenarios that the CSO will be able to delegate liability to this person if an incident occurs. The CSO should closely monitor the activities of these people and provide supervision where necessary.

Closely related to the non-delegable duty doctrine is the principle of **vicarious liability**. One is vicariously liable for the conduct of another if the following criteria are satisfied:

1. Party A has a special relationship (such as parent and child, employer and employee, or owner of vehicle and driver) with Party B.
2. Party B engages in negligent conduct while carrying out any work or task for Party A.

CSOs will be held vicariously liable for the negligent conduct of CSO workers or volunteers if the worker or volunteer is acting for the organisation. For example, a CSO will be held liable if a maintenance worker has followed instructions provided and fails to prepare a safe playing surface. Therefore, it is important that CSO administrators acquire sufficient knowledge and then ensure people performing a role for the organisation are appropriately trained, informed and instructed.

Defences apply to negligence, and some of these apply particularly to volunteer organisations. The legislation stipulates that 'community work' includes work for the purposes of sport or recreation. It also notes that **volunteers are immune from liability when performing their role for the CSO**. However, this immunity does not apply if the volunteer acted outside the scope of their authority or is significantly affected by drugs or alcohol.

It is important for CSO administrators to create a written agreement with each volunteer that clearly sets out the volunteer's role. The volunteer should be provided with appropriate training, relevant information, adequate supervision and avenues of support to perform the agreed tasks properly. This information should be recorded and documented by the organisation (e.g. in an Education Provided to Coaches, Trainers and Volunteers Register). This is an important part of the 'Compliance' procedures discussed later in this document.

Other defences which may apply are:

- *Contributory negligence*. This will apply where the injured person in some way failed to take reasonable care for his or her own protection. Where the injured person is a child, the degree of care expected from the individual may be diminished by the child's level of development or understanding.
- *Voluntary assumption of risk*. Where the participant is aware of the risk of injury and agrees to undertake that risk they are said to have voluntarily assumed the risk. Voluntary assumption of risk is a difficult defence to establish. "Knowing of the risk" requires personal knowledge and a full appreciation of the nature and extent of the risk. This is more than merely knowing the activity is "dangerous". The defendant must show that the claimant personally knew of the nature and extent of the risk they were exposing themselves to. Where the risk is obvious it is assumed that the participant is aware of the risk (e.g. the risk of being dumped by a wave when surfing). Establishing that the person's decision to participate was voluntary is more difficult if the participant was disabled, ill-informed or under 18 years of age. Certain risks are inherent in a sport or activity, and participants may have specifically agreed to other risks. An "inherent risk" is defined by the *Wrongs Act* as something that cannot be avoided despite the exercise of reasonable care. Voluntary assumption of risk is a complete defence.

→ **Contractual exclusion clauses.** Many organisations, particularly occupiers of premises, attempt to contractually exclude liability, either by notice or by membership or participation agreements. So, for example, the following clause attempts to limit the liability of an owner of premises for injury caused onsite:

You agree that [.....] shall not be liable to you in contract, tort, under any statute or otherwise for:

(a) the injury, illness or death of any person, unless such injury, illness or death has been caused by the negligence of [.....]; or (b) any other loss or damage of any kind, however caused, and whether direct or consequential, arising in whole or in part from, or in connection with, any [services] provided by [.....].

In the case of children, contractual agreements may be ineffective. In any event, exclusion from liability in negligence requires carefully drafted wording and may be ineffective for other reasons. Any attempt to contractually exclude liability should be done with legal advice.

Occupier's liability

Occupier's liability is a particular 'established' duty of care owed by an occupier to an entrant. An 'occupier' is one who is in control of a premises. This does not have to be the owner – it could be a lessee, for instance.

If a CSO is an occupier, then it must take reasonable steps to ensure the venue is safe for those who enter.

To understand the potential exposure to occupier's liability, CSO administrators should become aware of their maintenance obligations under their facility use agreement with the facility owner. However, complying with these obligations will not necessarily mean that the CSO has complied with the standard of care required by the law of negligence. A reasonable occupier may need to do more than is required by the lease, in order to comply with the required standard.

Administrators should also understand that there is the potential for joint occupier's liability if the facility owner or provider and the CSO both have maintenance responsibilities.

Professional liability

The professional duty relationship may arise in a number of CSO situations – medical officers, finance officers, and possibly coaches and trainers may be in a professional duty relationship with a range of participants. If someone specialises in a certain area or professes to hold a particular expertise, they should ensure that any statements they make and services they provide are accurate and given on a sound basis. For example, a physiotherapist or doctor providing services for a CSO should ensure any treatment or advice they provide is prudent and in accordance with professional standards. The same applies to others acting in a professional capacity for the organisation. In order to do a compliance audit, administrators should be aware of who may be providing information or professional services. In some cases, professionals will be members of professional organisations and may be obliged to carry their own insurance.

Trespass against the person ('assault' and 'battery')

Assault and battery can be crimes, but they are also torts. If a CSO is found liable in tort then the most likely outcome will be an award of compensation against it.

Intentional torts are a category of torts that require the defendant to have possessed the intent to commit the conduct that caused the plaintiff's injuries. Intentional torts against a person include assault, battery and false imprisonment. **Assault** is a direct threat by a person that causes another to (reasonably) apprehend some imminent, unwanted contact with their person.

Battery is directly and intentionally interfering with the person of another without lawful justification. Technically, any level of touching without consent is an assault, but participation in a contact sport implies some level of consent, which is the main defence to battery.

If a person gives consent to an interference they cannot then complain about its occurrence. *Express consent* is given through a spoken or written agreement. *Implied consent* applies where the contact is within the normal expected conduct of the game or activity. This will include contact within the normal rules of the game, as well as some contact outside the rules of the game which is still common. This is a matter of degree, and implied consent may not apply if the action involves flagrant or excessive breaches of the rules, such as punching someone during a game of football. Consent will be given when a person knows what they are consenting to, gives consent freely and has capacity to do so.

It is wise for CSO administrators to draft **consent forms** prior to participation. These forms should stipulate details around the nature and extent of the risks posed by the specific sporting activities. These should be explained to the participant in plain language. The participant should be required to sign a consent form before taking part in any training or competition. The consent form should also be signed by a parent or guardian if the participant has a disability or is under 18 years of age. The CSO should keep a record of all signed consent forms and all information provided to participants prior to taking part in any activity.

Other regulation

In addition to the legal and regulatory considerations outlined above, it is important that CSO administrators are aware of the regulations and policies of governing bodies, insurers and facility providers (including local councils). Particular attention should be paid to guidelines relating to health, safety and member protection (e.g. concussion, heat risks, illness and disease, coaching accreditations, protective equipment, providing first aid, prior-to-play inspections, and drug/alcohol consumption). CSO administrators should be aware of the existing regulations and policies of these bodies, and ensure they are complied with. This will make the CSO's task of drafting documents easier as it will avoid duplication or inconsistency with guidelines in place at higher levels.

Where to go for information

Once CSO administrators are aware of the legal and regulatory obligations associated with their position, it is important for them to seek out information to assist them to make informed decisions about how to meet their obligations. Gathering information will also help CSO administrators identify any risks related to the specific context in which the CSO operates that need to be appropriately managed. The sources of information and support available to CSO administrators are extensive and can broadly be classified as internal and external sources.

Examples of **internal sources** that administrators may gather information from include:

- coaches
- trainers or sports aid providers
- volunteers (e.g. canteen manager, equipment coordinator, grounds manager)
- participants
- team managers
- finance officers
- parents
- spectators; and
- board/committee members.

Examples of **external sources** that administrators may gather information from include:

- league or regional association (including Regional Sports Assemblies)
- State Sporting Association (SSA)
- National Sporting Organisation (NSO)
- venue or facility providers
- sporting and safety equipment providers
- local council (SEE BOX)
- local medical providers
- other community sports clubs (those involved in the same, similar or different sports)

- insurance companies
- independent, member-based peak bodies representing the sport and the active recreation sector at the state-level (e.g. Vicsport)
- the Australian and New Zealand Sports Law Association (ANZSLA)
- Australian Sports Commission (ASC) including Clearinghouse for Sport and Play By the Rules
- state government departments (e.g. Sport and Recreation, Health and Human Services)
- Sports Medicine Australia (state branches and national organisation)
- Not For Profit Law Information Hub (for not-for-profit organisations)
- Club Help (for rural organisations).

It is crucial for administrators to gather information from these internal and external sources to demonstrate well-informed, prudent, responsible and legally compliant decision-making.

Local Councils

Developing an open and productive relationship with the local council – both the elected members/ councillors and the employed staff – is crucial for most CSOs.

Local councils often own and manage the facilities that CSOs use for training, matches, events and other activities. They can also be valuable sources of information and support for funding opportunities, corporate governance and risk management training, and health and safety policy development.

CSO administrators should make early and frequent contact with relevant people from their local council. Consider inviting them to organisation functions (AGMs, significant celebrations, etc) and keeping them informed of CSO projects and team performance.

It may help to designate a CSO representative to be the key contact person for the local council, and to identify and develop mutually beneficial relationships with key council people – grounds maintenance staff, sport and recreation/development officers, community liaison officers and influential councillors. Open communication will enable the CSO to become familiar with important matters, such as the local council's insurance policies, ground allocation policies/procedures, maintenance schedules, and funding priorities in relation to the facility it uses.

If a CSO has difficulties with their local council, administrators should contact the Municipal Association of Victoria (www.mav.asn.au).

Getting organised

As the CSO environment is potentially legally complex, a compliance policy and procedure is recommended. A typical compliance program has five elements – a compliance culture; procedures; training; management support systems; and accountability, reports and audits.

Compliance culture

A compliance culture is developed from the top down, and should be supported by a clear, consistent direction from the CSO board, committee of management and administration. This is usually a compliance policy that is public and communicated to the entire organisation. Compliance should be considered the responsibility of CSO administrators.

It is important for CSO policies to reflect values of respect, tolerance and inclusion. They should also be consistent with the organisation's originating or governing document, and with any governing body policies and documents. CSO policies should be regularly updated. Assistance in drafting policies is available from the ASC's "Play by the Rules" website (www.playbytherules.net.au).

Fundamental to managing health, safety and member protection risks is ensuring that a wide range of people is involved in the process. One way to do this is to delegate safety and risk management roles. This will:

- lighten the load on administrators
- increase awareness of health and safety issues around the organisation
- allow for expertise and scrutiny relating to important health, safety and member protection matters.

Examples of roles appropriate to delegate within a CSO include:

- Health Officer
- Safety Officer
- Child Protection Officer
- Member Protection Officer.

People appointed to these positions should be provided with a clear, concise position description and any training or background information they might need to fulfil the duties of the role. They should be asked to regularly (perhaps twice a season) present to the CSO's board/committee. This will help promote awareness of their activities. It is important that people appointed to these positions are trusted within the organisation and background checks may need to be conducted.

All members of the organisation should be made aware that there have been people appointed to perform these specialist roles. Members of the CSO should be advised to contact these individuals if they have any concerns, complaints or questions.

When delegating health, safety and member protection roles, it is important for administrators to consider the support available at higher levels within their sport. People occupying positions within the league/regional association, SSA or NSO may make it unnecessary to delegate a certain role within the CSO.

Procedures

Procedures set out the mechanisms (the 'how') of how compliance is to be achieved. Procedures will set out specific directions on what is required of employees or, where relevant, volunteers.

An essential part of managing risks is for administrators to create risk management and safety documents. These should be updated regularly and important information should be recorded within them. This is crucial for administrators to be able to demonstrate that they have acted in a prudent and responsible manner. Proper documentation will also assist CSOs in funding applications, communicating with insurance companies and transitioning to new administrators.

As a guide, CSOs should consider developing and maintaining a Health and Safety Manual, and a Member Protection Manual with policies and information specifically tailored to their organisation:

Examples of policies that should be included in a **Health and Safety Manual** include:

- consent to participate policy
- physical preparation policy
- medical treatment policy
- heat and inclement weather policies (e.g. lightning)
- emergency procedures policy (including concussion policies)
- venue management policy
- playing and protective equipment policy
- playing conditions policy
- training of volunteers and workers policy
- educating of participants and members policy.

Examples of policies that may be included in a **Member Protection Manual** include:

- child protection policy
- coach accreditation policy
- supervisors policy
- screening policy
- privacy policy
- team selection policy
- alcohol and drug policy
- social media policy
- responding to complaints policy
- disability inclusion policy
- behaviour policy.

Training

Training should be provided to employees and, if necessary, volunteers on major compliance issues. Ideally, training should be accessible, continuously available, engaging, complete and accurate, effective and cost efficient, and easily updated as the law changes.

Management support systems

Management support systems should be put in place to ensure that problems can be identified and dealt with quickly. Support systems might include regular risk audit, targeting specific risk areas, induction of new volunteers, document support and the use of computer tools.

For instance, CSOs can create registers that store information about members and participants. Examples include:

- medical qualifications of members register
- facility inspection register
- communication with facility provider and insurer register
- volunteer agreements register
- education provided to coaches, trainers and volunteers (including expiry dates for accreditations) register
- injury history and pre-existing medical conditions of participants register
- actions taken to eliminate or minimise risks to the organisation register
- signed consent forms register
- steps taken to respond to complaints register.

Registers can be housed within the CSO manuals. Registers should document information about CSO personnel and reflect steps taken to identify and manage health, safety and member protection matters (i.e. remedying a potential hazard or responding to a member's complaint).

Administrators should be aware that the type and contents of registers will vary between organisations depending on the individual characteristics of the CSO. As previously mentioned, CSO administrators should look at the guidelines and policies of the sport's governing bodies before creating any club-specific documents. This will help prevent duplication and ensure consistency of expectations and messages.

Insurance

A CSO's acquisition of sufficient insurance coverage is an important form of risk transfer. Insurance policies that may be applicable to CSOs are as follows:

- public liability insurance
- workers' insurance
- volunteers' insurance
- volunteer personal accident insurance
- professional indemnity insurance
- directors' and officers' liability insurance
- property and contents insurance.

Administrators should be careful when acquiring insurance. They should make sure they are not duplicating insurance policies already in place at a higher level (league/regional association, SSA or NSO). They should also be careful not to duplicate any insurance coverage provided by the local council. For this reason, administrators should become familiar with the insurance details of all relevant bodies.

Once sufficient insurance coverage is achieved, administrators should ensure members are informed about the level of protection they are provided with. For example, members should be told about instances where they will be out of pocket if they suffer loss. This will enable members to pursue extra individual protection, to cover the shortfall, if they so wish.

Administrators should also be aware that insurance agreements are likely to stipulate that the CSO will not be indemnified by the insurance company if the CSO acts outside legal boundaries. This is particularly relevant to the OHS legislation and regulations. Administrators should be careful to ensure their organisation is always acting lawfully.

Administrators should consider contacting an insurance broker to make sure they are fully aware of all relevant insurance considerations and appropriate policies.

Your options for action

When a CSO has identified a risk or potential hazard, it may be appropriate for administrators to do any of the following: accept, eliminate, manage or transfer the risk. When deciding which option to adopt, administrators should consider a range of factors including organisation priorities, consequences of the risk, likelihood of the risk and the logistics associated with addressing the risk.

Option 1: Accept the risk

If a CSO has identified a risk and is willing to accept the legal consequences that the risk may occur, it is reasonable for the CSO to accept the current situation. It is important that the process of identifying the risk, and the reasons for accepting the risk, are documented. It is also important that identified risks are regularly re-visited and monitored to ensure nothing has changed and no further action is required.

Option 2: Eliminate risk

The steps taken to eliminate a risk may be straightforward. They may consist of: cancelling a planned event, changing the playing/training location or physically removing or repairing the hazard. For example, if a participant has recently suffered an injury, eliminating the risk will consist of not allowing them to return to full participation until they are cleared by a medical professional. When an administrator acts to eliminate a risk it is important for them to be forthright in their decision-making and to have health and safety as the primary consideration.

Option 3: Manage risk

The steps taken to manage a risk may require a more prolonged process, including:

- regularly discuss the risk around the organisation
- make the risk a regular agenda item at committee/board meetings
- wear protective equipment
- provide risk-related training, supervision and education
- set up barriers (padding, etc)
- post signs and provide warnings about the risk.

An example of a risk that may require continued management is a CSO's use of cricket balls. A hard object being propelled at high speed can put batsmen, fielders and spectators in danger. Members of the club should be provided with information about the damage that can result from such an incident occurring. Participants should also be informed of the organisation's policies relating to the risk. These could include: needing to use protective equipment at all times and not turning one's back when in the vicinity of a cricket ball in use.

High standards are necessary when managing risk. Relevant individuals should ensure that the CSO's policies, in relation to the risk, are diligently adhered to during all training sessions and matches.

Like documentation and delegation, **communication** is essential when considering safety, risk management and member protection. Matters of concern that are covered during board/committee meetings should be discussed throughout the organisation. Those who are delegated with safety, risk management and member protection roles will be important in this regard. Posting signs, disseminating information, holding information sessions and providing videos are ways of ensuring relevant matters are widely understood. Members of the organisation should be familiar with, and regularly reminded of, the hazards they face when participating. Taking steps to make members aware of the risks and potential consequences should help CSOs avoid incidents. It will also assist the organisation in developing a culture of respect and tolerance around health and safety.

Option 4: Transfer risk

It may be appropriate for the CSO to transfer a risk. The main mechanism to transfer risk is through a contract such as a lease, membership agreement or indemnity arrangements. In certain instances, it may be necessary for the organisation to defer a risk to the venue provider (i.e. local council, school or community group), league or regional association, SSA or NSO. It may also be necessary for the CSO to transfer the risk to their insurance provider. CSOs may also be able to transfer risk to the individual involved if they have signed a consent form.

An example of a risk that is appropriate for transfer is defective matting within a venue used for martial arts. As an occupant, it is appropriate for the CSO to ensure basic maintenance matters are addressed (i.e. rubbish cleaned, lights turned off and doors locked). However, depending on the use arrangement, the CSO may not be expected to fix equipment owned by the venue provider. If such a maintenance matter arises, the administrator should make the responsible body aware of the hazard as soon as possible. Doing so will enable the matter to be resolved.

Helpful resources

Australian Sports Commission, 'Club Health Check' (2016). <http://www.qlbs.com.au/ASCHHealthCheck/Assessment/ASCHHealthCheck>.

Australian Sports Commission, 'Risk Management' (2016). http://www.ausport.gov.au/supporting/clubs/governance/risk_management.

Chris Hume and Catherine Ordway (Clearing House for Sport), 'Critical Incident Management in Sport' (2016). https://www.clearinghouseforsport.gov.au/knowledge_base/organised_sport/sports_administration_and_management/critical_incident_management_in_sport.

Club Help website (targeted at supporting volunteers within regional sporting organisations) (2016). <http://www.clubhelp.org.au/volunteers>.

'Compliance Codes' section of the WorkSafe Victoria website (2016). <http://www.worksafe.vic.gov.au/laws-and-regulations/occupational-health-and-safety/compliance-codes>.

Dennis Goodwin et al., 'HB 246:2010 – Guidelines for Managing Risk in Sport and Recreation Organisations' (Standards Australia, first published 2002, 2010 ed). Of particular use is a "Sample Risk Register" (Table 12.1), a "Risk Treatment Plan" (Table 12.2) and a "Guide to Record Keeping" (Table 12.1). The Perisher Blue Ski Resort case study is at C4.2.

Not for Profit Law Information Hub website (targeted at administrators of not-for-profit community organisations) (2016). <http://www.nfplaw.org.au/>.

Play by the Rules website (Australian Sports Commission) (targeted at administrators of CSOs, providing resources, sample policies and online toolkits) (2016). <https://www.playbytherules.net.au/>.

"Running Your Club" section of Office of Sport and Recreation (Government of New South Wales) website (2016). <https://sportandrecreation.nsw.gov.au/clubs/ryc>.

"Training and Courses" section of the Sports Medicine Australia website (2016). <http://sma.org.au/training-courses/>.

Vicsport Child Safe Standards, <https://vicsport.com.au/child-safe-standards>.