

Memorandum

SURF LIFE SAVING
NEW SOUTH WALES



To: Branch Directors, Club Directors, Club Administration staff
From: Andy Kent – Operations Manager
Date: Friday 5 May 2017
Re: Special Events and Insurance Guidelines

There are a number of protections in place for volunteers which clubs should be familiar with and can provide guidance to their members on, as appropriate. It is the responsibility of all Board Members and Executives of Clubs to understand what SLSNSW defined operations and authorised activities are, and why the running of or participation in some events, may have legal and insurance implications for the club or its members.

Surf Life Saving NSW has been made aware by Roads and Maritime Services (SLS Maritime exemptions) and icare (formerly WorkCover) that some branches, clubs or members may be undertaking activities outside the authority of Surf Life Saving. This becomes an issue as not only can branches, clubs or individual members be held liable (without the protection of the SLS insurance policies) they may also run the risk of icare or Maritime breaches and associated fines and/or possibly imprisonment. In some instances the Australian Taxation Office may also consider some activities a breach of Australian tax law and penalise parties as they see fit under the relevant legislative framework.

Insurance Policies

NSW Surf Life Saving Clubs and members are protected by a number of insurance policies.

These are:

- Workers Compensation Insurance (icare);
 - Not available where the member has received “remuneration or reward” for the duties undertaken. For example: being paid for providing water safety at an event
 - Must be an “authorised activity”. That is, it must be within the scope of authorised Surf Life Saving activities/operations and approved through relevant processes including a [‘Special Event Application’](#) if required.
 - Member must be financial for the current season.
- Directors and Officers Insurance;
- General and Products Liability Policy;
- Other policies may be held by the club for property, building and vehicles.

Use of Surf Life Saving Equipment

SLSA Policy 1.02 governs the use of Surf Life Saving equipment.

Fundraising Activities

Fundraising is covered in both the Liability Policy and by icare.

Fundraising has been defined for the purposes of workers compensation as; authorised activities undertaken where the sole purpose is to raise funds for the SLSC. In addition, the volunteer undertaking the activity is covered if the principal activity being undertaken is fundraising, that is, not attending an event where fundraising may occur as an element of an event. For example, an injury sustained at a social event where raffle tickets are sold and the person who receives the injury was not actually selling the raffle tickets or it is a social event where the fund raising occurs through an additional charge made on food and drink, would not be covered.

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In summary, injuries sustained merely as a result of attendance at a social function will not be covered under workers compensation legislation. The individual must be engaged in an “authorised activity” when he or she sustains the injury.

Club Employees and Contractors

Clubs need to consider their legal obligations carefully before employing and paying persons to carry out work on behalf of the club. This includes people who are paid to;

- Work as bar staff
- Work in catering
- Work in office administration
- Carry out cleaning duties
- Conduct water safety or first aid at events.
- Tend to caretaker duties in exchange for in-kind support i.e. free accommodation.

These legal obligations include but may not be limited to:

- The payment of superannuation
- The provision of penalty rates, including leave and loading, prescribed under any applicable modern award.
- Payroll tax
- PAYG tax for the individual
- Maintaining a workers compensation insurance policy (workers compensation under icare is not available to paid staff, including caretakers)

An alternative to employing people to conduct work on behalf of the surf club would be to enter into an agreement with an independent contractor. As independent contractors aren't employees, they are not subject to the same employment obligations. Instead, independent contractors negotiate payment as part of their contract and submit an invoice when the work is complete. Legal and financial advice should be sought prior to entering into an agreement with an independent contractor to ensure it is appropriate for the work to be done.

Common Scenarios and Issues to Consider

There are a number of scenarios that Surf Life Saving Clubs in NSW are often presented with that should be carefully considered.

Scenario 1:

Red and Yellow SLSC is based in Sydney. They wish to conduct water safety at an obstacle race in greater Sydney using surf club personnel, equipment and whilst wearing their patrol uniforms. The obstacle race is clearly run for commercial gain by the organisers and in exchange for the club's assistance they offer to pay the club \$2000. The club intends to keep \$1000 of the funds for its charitable purposes and distribute the remaining \$1000 among its members who undertook the water safety activity.

Issues with this scenario:

- The club is not permitted to pay the members for a number of reasons including taxation issues and because the workers compensation cover for surf club members (icare) is not extended to them as the activity is not undertaken “without remuneration or reward” as required by the legislation.
- It is necessary to consider whether the members are adequately trained to conduct this activity. It should be noted that the activity falls outside of the SLSNSW SOPs and therefore a greater risk may be presented.
- It is also necessary to lodge an Application for Special Event form with SLSNSW.

- Once an individual receives payment they are not operating as a volunteer and no longer have any right to any SLS exemption i.e. Maritime.

It's important to consider if an individual who happens to be a member of Red and Yellow SLSC is seriously injured while involved in the above activities. Any injuries are not covered under the workers compensation legislation put in place for emergency workers including surf lifesavers. Any legal proceedings against either the individual or the club are not covered, leaving the individual and/or the Club Executive exposed to both criminal and civil penalty. If the ATO investigate and determine individuals have been paid cash without appropriate record keeping they may take action. If Roads and Maritime Service (RMS) attend and determine that IRBs (for example) have been used during an event, not previously notified to SLSNSW, they may issue fines.

Scenario 2:

Red and Yellow SLSC is based in Sydney. They often hold club events in their upstairs auditorium in which an executive member of the club will normally pay cash to a number of members to work the bar (without taking into consideration tax or superannuation requirements).

The SLSC also has a club caretaker who lives on site rent free. The caretaker is a member (resident member). In exchange for this arrangement the caretaker cleans and provides security to the clubhouse.

Issues with this scenario:

- The ATO may investigate and take action if the bar staff are being paid without any regard to tax or superannuation requirements.
- For the purposes of the *Work Health and Safety Act (NSW) 2011* the bar staff and the caretaker are considered to be "Workers". As a result the officers of the club have a duty of care to ensure a safe work environment.
- The club is required to maintain a workers compensation insurance policy for its workers. icare workers compensation is not available to cover the caretaker or the bar staff because they are remunerated or receive in kind support. It is recommended that the club takes out an additional policy for its employees.

Scenario 3:

City SLSC receives a phone call from an event company to provide two IRBs on Sydney Harbour to assist with water safety for a popular Sydney Radio Show. City SLSC posts this opportunity on Facebook offering to pay cash to an IRB Driver and Crew for three hours of their time.

City SLSC fulfils the request and receives payment from the event company. As there was less than one week's notice, they proceed without a Special Event Application being submitted and subsequent approval granted by SLSNSW.

The event itself is undertaken without any issues and the club has made a cash payment to the individuals involved.

Unfortunately, RMS have witnessed the activity and have contacted SLSNSW to obtain a copy of the Event approval paperwork. This does not exist, therefore the boats were on the Harbour unregistered (the SR registration on IRBs is only applicable in SLS approved activities). All other maritime exemptions held by SLS are also not applicable on this occasion.

As the individuals were paid cash for this event, further action could be taken by the ATO which could be severe and if the individuals were injured on the day, icare workers compensation insurance would not apply.

Scenario 4:

Beach SLSC is asked by a third party organisation to provide First Aid and Water Safety for a weekend event at a location away from their beach. They are required to provide two jet skis, three IRBs, and up to 15 members for first aid and water safety. The club will receive a sum of money for these services. The club then contracts out this requirement to a provider who is able to provide relevant equipment.

Beach SLSC will have individuals in uniform, but has indicated that payment will be made for their time. *Beach SLSC* has been advised that third party contractors (whether they are members or not) do not fall under the SLS umbrella of insurance policies nor do they have access to Maritime exemptions e.g. Jet skis on the beach, within 60 metres of flags or swimmers etc.

Beach SLSC believes that as the local council has given them permission for the activity that this will also allow them the Maritime exemptions. This is not the case and it is important to understand that RMS has advised SLSNSW they will be attending events to monitor adherence to these regulations. Again, by paying individuals SLS insurances and workers compensation protection is void.

Summary

These scenarios highlight some of the risks associated with clubs not adhering to appropriate policies. In many cases, these risks can be significant and have the potential to leave clubs and members unprotected and exposed. SLSNSW advises clubs to seek relevant advice from legal, financial or insurance professionals to determine what impact engaging in a particular activity could have on a club.