



Insurance Information Sheet

Public Liability and Volunteers Insurance

The Aim of this Information Sheet

A common question from the sector is: *“When is a volunteer covered by Public Liability Insurance and when do you need Volunteer Insurance?”* This information sheet aims to assist services to understand the differences between these types of insurances and when you might need them.

Summary

Public Liability insurance covers the costs and compensation to be paid by your organisation if you are sued by someone.

Personal Accident (Volunteers) insurance pays an amount to help a volunteer cover their costs while they are recovering if they are hurt when volunteering for you. It can also provide single payment for permanent disability or death.

Public and Products Liability Insurance

“This is insurance under which the insurer agrees to indemnify the insured for legal liability owed to another person who suffers loss or damage by reason of the insured's activities”. (NSW Office of Fair Trading)

Most organisations want this insurance because the costs can be very high in the event that something goes wrong and they are sued for compensation – most organisations are covered for \$10 million. An uninsured public liability claim could bankrupt an organisation, leave an injured person without compensation and open up the possibility of legal action against the Board of Management. Funding agreements often stipulate that the funded organisation must take out adequate public liability insurance.

For example: A person made a claim to the court against a community service organisation for damages from injuries suffered while working on a farm for a 'Work for the Dole' scheme. The person was directed to erect a fence. There was a trench nearby. While the person was using both hands to attach mesh to the fence the person slipped and fell into the trench and broke their leg. They sued the organisation because they failed to provide a safe place and system of work. This was a breach of their duty of care, their duty to avoid a reasonably foreseeable risk of injury. The court ordered the person receive damages in the sum of \$199, 550.19 (see *Case Law NSW DC213 (2008)*).

Personal Accident (Volunteers) Insurance

Personal Accident (Volunteers) insurance is taken out by organisations because they want to treat their volunteers well. A volunteer Board Member is usually regarded as a volunteer. The idea that volunteers might be 'out-of-pocket' or left uncompensated for an injury that they sustain while undertaking voluntary work doesn't seem right to most organisations. This is the strength of Personal Accident (Volunteers) insurance.

An example might be: Mrs. Pitman is volunteering in the Neighbourhood Centre and when she is stacking tables she drops a table on her finger and breaks it. It's not a permanent injury, but Mrs. Pitman is unable to continue her paid work for the next three months. The Centre makes a claim on its Personal Accident (Volunteers) insurance to pay Mrs. Pitman weekly payments; the payment cover her lost income (up to the maximum amount per week set out in the policy schedule) and the costs of her physiotherapy treatments, which are not covered by Medicare.

Personal Accident (Volunteers) insurance is used to support a volunteer who is injured in an accident while volunteering – it does not rely on the volunteer taking legal action against the organisation. This helps because the circumstances of the accident may make it unlikely that the volunteer would be able to make a successful compensation claim against the organisation or they *may not want to sue* the organisation for compensation. In our example Mrs. Pitman could be supported by Personal Accident (Volunteers) insurance while she couldn't work even though no legal action was taken.

Having Personal Accident (Volunteers) insurance does not stop a volunteer from suing an organisation for compensation.

How a Claim is Made

A public liability insurance claim is usually made by an organisation when a person sues the organisation because of an injury to themselves or their property as a result of some negligence of the organisation. This usually leads to a court hearing and a determination by the court on the compensation, if any, is to be paid to the person. It is possible for an out-of-court settlement to be made after negotiations.

In contrast to this, an organisation can directly claim on their volunteer insurance policy if a volunteer is injured in an accident while volunteering. The types of claims that can be made and the limits to the payments are laid out in the schedule of the volunteer insurance policy.

Time Frames for a Claim

"Public Liability is a 'long-tail' insurance, meaning that in worst-case scenarios a claim can be made on today's policy in 15 years time for an adult or, for a child, a claim can be awarded up until the 'child' turns 37" (NCOSS, *Insurance: What's It All About*, p21).

This contrasts with volunteer insurance. A typical Personal Accident (Volunteers) policy says a claim will be paid if an "event" happens "during the period of

insurance". A typical Personal Accident (Volunteers) policy makes payments to a claimant for a period of up to one or two years after the accident happened. After that, the policy expires. The insurer typically states that they must be notified within 30 days of an accident that may cause the service to make a claim.

When an organisation is sued, it is usually the court that determines the compensation payments that are due to the injured person.

Types of Payments

Below is an extract from a typical Public and Products Liability policy wording. This is the first part of the 'insuring paragraph':

In consideration of the payment of the premium stated in the Schedule and subject to the terms, conditions, provisions, exclusions, and limits of liability incorporated in this policy, the ... [insurers] ... agree to indemnify the Insured for all amounts which the Insured becomes legally liable to pay as compensation for personal injury, property damage, and/or advertising liability, happening during the period of insurance caused by an occurrence in connection with the Insured's premises or business.

Public and Products Liability insurance is designed to cover the organisation for both the costs of the compensation and the costs of being involved with the legal action. Sometimes the insurance company may actually want to 'take over' the legal action themselves to ensure that they minimize the costs they have to pay on behalf of the organisation.

Personal Accident (Volunteers) insurance is quite different to this.

The following is a typical wording for a volunteers policy.

When we will pay:

If any of the events, set out in the 'Table of cover' below, happens to the insured person during the period of insurance, we will pay the benefit set out next to that event. Your schedule sets out which of the events are covered and the amount of the benefits. The event must result solely and directly from an injury suffered by the insured person, in an identifiable accident, which occurred not more than one year before the event, while:

- (a) doing voluntary work, which you have organised and which you control, for you; or*
- (b) travelling to, from, or during such voluntary work"*

Personal Accident (Volunteers) insurance covers things like:

- medical costs not covered under Medicare,
- loss of income (for employed people for a limited time, usually 104 weeks),
- home help and personal assistance or study assistance.

Personal Accident (Volunteers) insurance usually has lump sum payments available for death or disablement (usually to a maximum of \$50,000 or \$100,000). A proportion of the maximum is paid to the injured person according to a 'table of events' (e.g.: a typical schedule might specify that the permanent loss of the lens of one eye is 60% of the maximum).

Personal Accident (Volunteers) insurance payments are made according to fixed amounts determined in the policy schedule.

Useful Links:

Our Community:

http://www.ourcommunity.com.au/insurance/insurance_main.jsp

NSW Dept of Fair Trading:

<http://www.fairtrading.nsw.gov.au/>

Law Access NSW:

www.lawaccess.nsw.gov.au/

NCOSS – Insurance:

www.ncoss.org.au/insurance

NCOSS is not a licensed financial advice service and this Fact Sheet is provided as general information only.