



QUESTIONS AND ANSWERS

This month's 'Leaders News' is devoted to some of the questions that we get asked at Members Support. We have selected those that could have some legal implications. A simple brief answer is given.

1. **PROHIBITED EMPLOYMENT DECLARATIONS:** (What we call a PED)

Why aren't they included in the Y1 form? The PED is an official document and must remain as is. We have always suggested that it **accompany** the Y1 and that you get both parents to complete one so that it's easier for the Leaders to remember who has or hasn't signed it. If every parent signs when their child joins the Group, they won't have to sign them in the future for each activity they attend.

What about one signed for soccer? No we must ensure it is in fact signed and we must keep it safe.

How long do they last? Forever, the law only requires us to get them signed once. It's then up to the person to notify us if there is a change in their status.

What about PLs and Sixers? The Commission for Children and Young People recognises the Patrol System etc is a 'shared leadership' and has ruled that PLs and Sixers don't have to sign.

What about Cub Instructors and Helpers? They don't have to sign IF they are under direct supervision and not in control. (As is required by our Policy)

What about 'link activities' between sections? If a child from a younger section is involved with youth members from an older section and there is no leader (such as a Cub on a Patrol outing/ Hike and/or Camp) **then the** youth member leading the Group would have to take a PED home for their parents to approve and have the youth sign. Instead of explaining all the responsibilities placed upon us as leaders we suggest you tell the youth leading the party to *"Ensure the Cub isn't teased or bullied and try to help the Cub have a good time."*

2. **WHAT ABOUT TWO DEEP LEADERSHIP? WHAT IF ONLY ONE TURNS UP, OR ONE GOES HOME SICK. ?**

The Law and Scouting require you to have sufficient leaders for the number of youth members at an activity or meeting. It is reasonable that on occasions someone will not turn up or go home sick. Therefore on some occasions one leader is acceptable.

It is **unreasonable**, if you don't have an assistant, for the Group not to have been actively recruiting and /or set up a parent roster. It is important to have this attempted recruitment documented, (eg minutes of meetings and Newsletters seeking Leaders).

It's reasonable that in a volunteer society that there will be difficulty in recruiting leaders BUT this is not an excuse not to try.

Is it reasonable for there to be only one leader in the hall when it's first opened at night? YES. But ensure the youth members who arrive are in view of all others as they arrive and the door open.

3. **PEOPLE CONSTANTLY GET INSURANCE MIXED UP WITH DUTY OF CARE.**

There is a difference between people on Scout property being hurt by a falling tree or slippery paths (which is basically a Public Risk Insurance issue) and our duty as Leaders to take care of youth members in our charge.

Duty of Care in this last sense is concerned was someone negligent in carrying out those responsibilities. Remember that parents too, have responsibility to supervise and care for their children (at least up to and from the Hall). Leaders, especially Cub Leaders, should be aware that they do not take on more legal liability than is required, as this may unnecessarily expose them to a legal claim.

(NOTE: These next few answers are meant to simply provide information so you might best be able to deal with questions that might arise from the "Understanding your DUTY OF CARE " Leaders Support Guide.)

4. What is Duty of Care ? It is important for you to have an understanding of Duty of Care. The definition is:

NEGLIGENCE. Causing damage unintentionally but carelessly.

Depends mainly on something that was **reasonably** foreseeable and depends on three conditions, referred to as the **Duty of Care**

- 1. Avoiding causing harm to another person which only arises where it is **reasonably** foreseeable that in a particular situation the other person would be harmed by one's action without the exercise of **reasonable** care.
- 2. Failure to take steps to take **reasonable** measures to avoid reasonably foreseeable risk.
- 3. That the **consequences** were **reasonably** foreseeable. (*damage caused was not too remote*)

Reference: CCH & Macquarie Concise Dictionary of Modern Law also based on the judgement by Justice McHugh in Tame v State of NSW (High Court 5/9/2002)

5. What is REASONABLE?

It is what the local community as a whole, or the Judge, agrees is the accepted reasonable standard for that community. For example, it could be considered reasonable for a 10 year old boy to ride his horse down the main street of Lightning Ridge. It might not be reasonable for a 10 year old novice rider to ride a hired horse down the main street of the City of Sydney.

It is Reasonable to not to have crash hats on canoeists for fear of something falling from a plane BUT unreasonable if they are going down rapids and could capsize and hit their head on the rocks.

6. HOW DO SCOUTS PROTECT ME? AREN'T I COVERED BY INSURANCE?

Yes you are covered if you follow the guidelines, policies and procedures that are in place to protect you. However if you ignore them (e.g. by failing to ensure that safety procedures for Water Activities or Rock Related Activities etc are followed) you may not be covered by that insurance and you may become personally liable to pay damages..

7. STANDARD OF SAFETY.

The standard of safety is far more restrictive on schools for a number of legal reasons. Organisations, such as Scouting, are considered to be in a different category. We are an 'activity –adventure' organisation. Therefore reasonable to assume that parents are aware that there is a higher degree of risk than if their child were at school.

8. WHAT IS PHYSICAL SEPARATION IN MIXED GENDER SLEEPING SITUATIONS?

A physical separation is not necessarily a wall or curtain, but can be just a reasonable physical distance or space, between leaders and youth or male and females..

We don't consider small four person tents have enough space for adequate separation. Auto tents Marquees, halls, even large caves can often provide an adequate space separation, depending on numbers.

Leaders can also sleep in the same facility in these situations providing there is a physical distance between them and youth members and there are a number of youth members in the same facility.

9. WHAT IS WRONG WITH USING THE OLD GREEN BACKED PRINTED VERSION OF THE ORGANISATION & INFORMATION HANDBOOK?

Its 8 (yes, eight) years out of date. The very latest is available on the Web, **check the date**, (as of July 05 - it is the May 05 Edition.)

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Regional Support Team

Consult your Region Office for their contact details.