



**DOES THE ASSOCIATION PROTECT ME FROM LEGAL CLAIMS
 OF NEGLIGENCE WHILST ACTING AS A LEADER OR COMMISSIONER?**

The answer is simple yes, except possibly in cases of 'gross negligence', or a 'deliberate' act by a leader

SO! WHAT IS CONSIDERED GROSS NEGLIGENCE?

Transporting six scouts (no seat belts) in your Mini Cooper, doing 40 kms over the speed limit, going through a stop sign, smashing into a Rolls Royce and failing the breath test. That's gross negligence!

There are doomsday people out there claiming you would lose the shirt off your back. Tell them to take another tablet and calm down. The key word is reasonable.

It's reasonable that a form goes astray, especially as you are so regular with lodging them. It reasonable you didn't know they wouldn't follow instructions. It reasonable you didn't know of a **very** recent change in policy.

We have had a particular stance on how well you're protected and when, but in this litigious world it was decided to confirm long-standing legal opinions and investigate what our Insurance Brokers had to say.

The response from the Brokers was:

"I believe we can simplify the message by confirming GL's and other members of the Association are indeed covered in respect of legal liability arising out of personal injury and/or property damage. The possible exception to this is where liability arose as a result of gross negligence and/or deliberate act on the part of the Association member(s).

The issue of gross negligence is subjective. In looking at Warwick's comments and references to the Civil Liability Reform Act, I agree with his line of thinking and believe it would be very difficult for indemnity not to apply unless circumstances dictated otherwise. If the Association member was performing his/her duties to the best of their abilities and following procedures where applicable, cover will always apply even when mistakes are made."

+++++

The 'Warwicks Comments' referred to are basically those below.

**The CIVIL LIABILITIES ACT 2002 protects
 Leaders and Group Leader and Commissioners from claims of negligence**

In simple terms, if you do things for scouts using common sense and YOU are **REASONABLY following our polices and procedures**, then people are likely to sue the organisation for negligence not the individual.

Unless drunk or impaired by drugs, committing a criminal act, or grossly negligent leaders acting reasonably are covered.

Liability still exists for motor accidents where the liability, except for The Civil Liabilities Act 2002, would be covered by a third-party insurance policy under the *Motor Accidents Compensation Act 1999* or be recoverable from the Nominal Defendant under that Act.

You should also read LSG 5 on Duty of Care.

IF you as RC or DC or GL tell someone NOT TO, and they do, you have carried out your duty of care. If you tell someone NOT TO, and they are advised differently by someone else, it's the other person's fault. (as long as you can confirm you said the opposite.)

However you need to show that you have tried to enforce your advice (e.g. we advised 2 deep leadership to everyone in the Regional Newsletter, and as shown in the Mindari minutes). Be able to demonstrate how we keep trying to get a new leader (a record of phone calls made or articles in the local paper) AND have a parent roster in place in the meantime.

The biggest risk is to Section Leaders who have no parent or second leader in attendance. No one to look after youth members put in your care, whilst you have to rush a child to hospital, phone battery dead. There is no one to support the leader's version that they didn't hit the child or punch the parent's lights out etc.

A GL may be at risk to show they didn't JUST 'close their eyes' to something such as knowing the Venturers were going abseiling without someone holding the appropriate qualifications. They must try to do something about it. In other words, knowingly allowing procedures to continue which are illegal, unsafe or against Policy, is very naughty and may expose you to a claim for damages.

However, the Association will cover you if you have acted REASONABLY.

+++++
EXTRACT FROM CIVIL LIABILITIES ACT 2002

Under Part 9 – Volunteers

61 Protection of volunteers

A volunteer does not incur any personal civil liability in respect of any act or omission done or made by the volunteer in good faith when doing community work:

- (a) organised by a community organisation, or*
- (b) as an office holder of a community organisation.*

62 Liability not excluded for criminal acts

This Part does not confer protection from personal liability on a volunteer in respect of an act or omission of the volunteer if it is established (on the balance of probabilities) that at the time of the act or omission the volunteer was engaged in conduct that constitutes an offence.

63 Liability of intoxicated volunteer not excluded

The protection from personal liability conferred on a volunteer by this Part in connection with any community work does not apply if:

- (a) the ability of the volunteer to exercise reasonable care and skill when doing the work was significantly impaired by reason of the volunteer being under the influence of alcohol or a drug voluntarily consumed (whether or not it was consumed for medication), and*
- (b) the volunteer failed to exercise reasonable care and skill when doing the work.*

64 Liability of volunteer not excluded if acting outside scope of activities or contrary to instructions

This Part does not confer protection from personal liability on a volunteer in respect of an act or omission of a volunteer if the volunteer knew or ought reasonably to have known that he or she was acting:

- (a) outside the scope of the activities authorised by the community organisation concerned, or*
- (b) contrary to instructions given by the community organisation.*

65 Liability not excluded if insurance required

This Part does not confer protection from personal liability on a volunteer if the liability is a liability that is required by or under a written law of the State to be insured against.

66 Liability not excluded for motor accidents

The protection from personal liability conferred on a volunteer by this Part does not apply if the liability would, but for this Part, be covered by a third-party insurance policy under the Motor Accidents Compensation Act 1999 or be recoverable from the Nominal Defendant under that Act.

+++++

A PAGE-FILLER THAT IS IMPORTANT.

We are required to remind you that there exist very strong laws to protect the privacy of children especially those where they are alleged to be the victim or perpetrator or an offence. You must not provide their names or other identifying information(including details of the incident or alleged offence), especially to Parent Committees or Leaders in other Groups.

In addition it is an offence to reveal the name the person making the allegation, no matter what their age. The appropriate section from the Act is below.

Simply report direct to: childprotection@nsw.scouts.com.au or to the State Office or Region Office.

Children and Young Persons (Care and Protection) Act 1998 section 29 Protection of persons who make reports

- (f) the identity of the person who made the report, or information from which the identity of that person could be deduced, must not be disclosed by any person, except with:*
 - (i) the consent of the person who made the report, or*
 - (ii) the leave of a court or other body before which proceedings relating to the report are conducted,*

and, unless that consent or leave is granted, a party or witness in any such proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

State Headquarters Support Team

- Dr Warwick Bateman OAM (Assistant Chief Commissioner)
- Robert Rodgers. (Assistant State Commissioner - Members Support)
- David Marston. (Assistant State Commissioner - Members Support)