

Contract Indemnities

“...prevention is better than cure.”

One of the issues which effects Catholic organisations is the need to understand the risks associated with managing contracts in relation to property and equipment.

Many Catholic organisations manage, occupy or have the responsibility for land, premises, equipment, and the like. Organisations often have the power to allow other parties to use these facilities – parties may be permitted to lease or occupy the land or premises on a short or long term basis, or to hire certain equipment. For example:

- A circus may wish to use part of the Parish grounds for a period of two weeks
- Sporting clubs may wish to use an oval on a short or long term basis and occupy both the ground and the pavilion
- A promoter may wish to use a venue for a concert, tennis tournament or similar type of entertainment.

Checking and carefully analysing the contractual documents is part of effective risk management and good business practice.

Duty of Care

Catholic organisations that permit others to occupy and use land or premises or to hire equipment have a duty of care to third parties in respect of the use of the premises or equipment.

The organisations may be liable for injuries or damage to property caused by activities on the premises or from the use of equipment if:

- They are in a position to foresee certain risks which are inherent in the way that those activities are organised or carried out; and
- They fail to take reasonable care for the protection of people whom they know are entering onto that area or using the equipment.

Liability for injuries or damage to property may rest with both the organisation and the party conducting the event on the premises or using the equipment. For this reason it is important that organisations ensure that they obtain an indemnity (supported by appropriate insurance cover) from that party against any liability that may be found against the organisation.

The 1985 decision of the full court of the Supreme Court of Queensland in *Wilkinson v Joyceman* provides a relevant example. In that case, the plaintiff's husband was a spectator at a stock car race and was fatally injured when struck by one of the cars.

The race meeting was conducted upon land that was held by the defendant as lessee. The defendant had licensed use of the land to a local association who was responsible for the organisation of the event.

To obtain further information about contract indemnities please see back page

The court decided the case under the general principles of negligence and found against the defendant even though the defendant was not responsible for organising the event. In that case Campbell CJ said:

...the occupier or owner of the land may well, in certain circumstances, owe a duty of care to person who enter onto his land when he knows that certain activity, such as a sporting contest, is being carried on there and he has sufficient knowledge of the manner and conditions in which the activity is being conducted by others.

The plaintiff was awarded damages.

Obtaining Indemnities

At the time the party requests use of Catholic property and facilities, it is essential for the controlling Catholic organisation to pay close attention to the contractual documents. Before the party commences occupation or obtains use of the facilities or equipment, the following general rules are fundamental:

- The contract must include an indemnity for claims – property damage, personal injury, financial loss or public liability – arising from the party’s use of the facilities. The indemnity should be for the whole period, including the setting up and cleaning up periods.
- No party should be permitted to occupy or use Catholic property without first having appropriate liability insurance cover. The Catholic organisation (including the proper legal description) must be noted on the policy, which means they will be co-insured.
- Occupation or use should not commence without a Certificate of Cover being sighted and checked. Catholic Church Insurances will happily check this document on your organisation’s behalf.

The time to negotiate these arrangements is **before** the party is able to occupy the premises or use the facility or equipment – **not during or after** the event.

Correct names are important

Before signing any contractual documents, analyse all indemnities and insurance arrangements to ensure your organisation is legally protected. (There are some areas of law where indemnities will not be upheld, but these are few.) Your lawyers can assist with ensuring the indemnity is appropriately drawn and checking that your organisation is given its correct legal description.

Achieving the appropriate indemnity and insurance arrangements for the first contract will require the most effort – once you have done this, your organisation will have a working precedent to follow. Checking future contracts will also be easier if you create a checklist of procedures to ensure all steps are performed carefully on each occasion.

If a claim is made, your organisation should immediately refer to the indemnity and the insurance cover. If the indemnity is properly drawn the liability issues will be clear and protection will have been obtained where appropriate.

Granting Indemnities

On the other side of the coin, when a Catholic organisation is the one contracting and the other party is producing the contractual document, it is vital that your organisation analyses these documents to ensure it is not conceding more than needs to be given.

Naturally, the lawyers drawing the documents on behalf of the other party will be looking mainly to protect their client. If your organisation has not properly analysed the indemnity and insurance provisions in the agreement, it is possible you may unwittingly have given the other party an indemnity and be carrying an unnecessary liability.

Skillful negotiation pays off

It is important to put effort into all contract negotiations. If negotiations are well handled on your side **before** a contract is entered into, the other party will ideally provide the appropriate indemnity and insurance cover.

The other party will be focussing on the successful staging of its event or use of the facilities or equipment; taking care of risk should be seen as critical to the success of the activity. In most cases, parties will already anticipate having to provide indemnity and insurance cover as part of the consideration for entering into the main agreement.

Private insurers are also well aware of the obligation on the contracting parties to provide certain indemnities as part of normal business practice.

Improved management of risk involves giving attention to all the elements. So while the contract may specify where any costs will be directed ‘prevention is better than cure’. The opportunity should be seized for the contract to be written in such a way as to impose risk management disciplines so

that during negotiations the parties reach an understanding about the practical arrangements which will be in place.

It is good practice to appoint an appropriate person within your entity to understand these issues and acquire contract skills.

Suggested Guidelines, example for hiring of School Property

1. In a case where a school rents a building or part of a building to an outside organisation each legal entity is responsible for any bodily injury or property damage arising out of its negligent actions.

As the landlord, the school has the liability of a property owner and the other party has an occupier's liability. The school's liability is covered by the Archdiocese Master Public Liability Policy up to \$50,000,000 in respect of any one claim or series of claims arising from one event. Whether or not liability exists the policy bears the cost of legal defence.

The possibility always exists that the property owner and occupier will be joined in a legal action by a third party therefore it would be prudent for

the school to satisfy itself that the occupier has a current Public Liability insurance policy with a limit of indemnity of not less than \$5,000,000.

2. Claims eventuate from mostly predictable circumstances. These areas include:
 - Inadequate lighting outside of the hall and from car parks
 - Slippery floors
 - Dangerous steps both inside and outside the hall.

Effective and simple countermeasures to help prevent accidents from happening are:

- Review after-hours lighting and install sensor lights around car-parks and paths which lead to the hall
- Place anti-slip mats in "wet" areas
- Where steps are provided (without hand rails) ensure the edges are clearly marked and place obstacles on the side to prevent falls sideways
- Regularly review the operation of all lights
- Restrict car parking to designated well lit areas
- Identify any hazards which may be in the shadows.

Sample Agreement for Hall Hire

Hall Hire Lease Conditions Agreement

Conditions for hire of Primary School Hall and Hall Meeting Room Facilities

1. Applications for the use of facilities must be made in writing on the form supplied, and signed by an adult person attending the function who will be held responsible for adherence to these conditions.
2. A "BOND" of \$300, must be deposited with the booking officer prior to the function and will be refunded in full provided that no damage is done to the hall and facilities, and the surrounding property is left clean and tidy. Loss of keys may entail replacement of locks and this will be at the discretion of the booking officer and is at the liability of the hirer.
3. Rental charges for the use of facilities must be paid at the time of making the bookings, or, in the case of ongoing use by arrangement with the booking officer. A \$20 cancellation fee applies to cancelled bookings.
4. Nothing is to be attached in any manner to the walls, floors, curtains or any part of the buildings or signs, scenery etc. erected without the written permission of the booking officer. Should any damage occur, the booking officer's assessment will be final.
5. The right is reserved to refuse to let the facilities is at the discretion of the booking officer in which case all monies paid will be refunded.
6. The school make no warranty or representation to the Hirer about the condition of the hall or facilities or their suitability for the Hirer's purpose. Further, the Hirer acknowledges that they have inspected the facilities and warrants that the facilities are suitable for the Hirer's purposes.

7. The Hirer will be responsible for any accident, loss, damage or injury suffered by any person using the facilities during the hiring period and any loss, damage or injury suffered by any person on the hired premises and it's surrounds. Further, the hirer agrees to effect Public Liability insurance, Workcover etc., and to indemnify the school for any claim arising from excessive noise, disturbance or nuisance by people attending the function.
8. The Hirer shall be liable for and shall indemnify the school against any liability, loss, claim or proceeding in respect of any injury, loss or damage whatsoever to any property real or personal in so far as such injury, loss or damage arising during the hire period."
9. The Hirer shall be liable for and shall indemnify the school against any liability, loss, claim or proceeding whatsoever arising under any legislation or at common law in respect of personal injury to or death of any person arising during the hiring period.
10. The Hirer agrees to effect insurance which at all times covers liability to the public for an amount not less than \$5,000,000 in respect of personal injury to or death of any person whomsoever and in respect of any injury, loss or damage whatsoever to any property real or personal including property belonging to the Hirer or in which the hirer has an interest, where the injury, death, loss or damage occurs during the hiring period.
11. The Hirer shall obtain insurance or pay levies or similar charges as required by any legislation relating to compensation for injured workers. Where such legislation does not provide indemnity against claims for common law damages by workers, the Hirer agrees to insure against such common law liability in relation to all persons employed by the Hirer during the hiring

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12. The Hirer agrees that the insurances referred to in clauses 7 to 11 shall be effected so as to be in force as from the date the school makes the hall and facilities available to the Hirer and shall be maintained until the end of the hiring period.
13. It is the responsibility of the hirer to obtain any necessary permits from the relevant authorities as required for the planned activities. If entertainment is to be provided, it must be in keeping with the values and standards of the school. All programs must be submitted for approval in advance.
14. If kitchen facilities are to be used all appliances must be left in a clean and tidy condition. No food or drink may be left in the Cool Room and all bottles and rubbish must be removed from the premises and placed in the appropriate clearly marked bins. Please stack chairs in groups of 6-8 in order of colour and shape and return to the storeroom. Toilets must be cleaned and swept. **ALL** external doors must be locked. **DO NOT turn off the Cool Room.**
15. Persons authorised by the booking officer shall at all times be entitled to free access to all parts of the building. Sales of any kind are not permitted without prior approval.
16. Sub-Letting of facilities is never permitted.
17. In case of any disputes arising, the decision of the school principal will be final.
18. Noise (music etc.) must be contained within the requirements of the regulations administered by the Burwood City Council.
Additionally **MUSIC MUST CEASE AT MIDNIGHT ON FRIDAYS & SATURDAYS, 10PM SUNDAYS AND 11PM FOR ALL OTHER DAYS.**
19. The Hirer of the hall and guests are confined to the hall and its accompanying facilities and this does **NOT** extend to the school and playground.
20. The Hirer is aware that the hall is in a residential area and at persons attending the hall refrain from any

behaviour which could be reasonably construed as disturbing the neighbours or infringing on a person's property and/or rights.

21. Approval for the consumption of alcohol may be withheld at the discretion of the booking officer.
22. Under no circumstances shall liquor be sold until approval from the booking officer has been obtained and the necessary liquor permit is sighted at the time of obtaining the hall key and payment of bond.
23. **PLEASE NOTE:**
THE SCHOOL GATE IS OPEN FROM 7.45AM till 12.00 NOON on a SUNDAY FOR THE USE OF PEOPLE ATTENDING ST. BENEDICT'S CHURCH. BE SURE THAT ANY CARS WHICH ARE PARKED IN THE SCHOOL GROUNDS ARE REMOVED BY MIDDAY WHEN THE GATES ARE LOCKED. HALL PATRONS ARE REQUESTED TO PARK IN THE CHURCH CAR PARK OR IN THE STREET, BUT NOT ON THE LAWN OR NATURE STRIP IN FRONT OF THE SCHOOL.
24. **SMOKING IS NOT PERMITTED WITHIN THE HALL.** Cigarette butt receptacles are provided and are to be placed outside the hall for use.
25. Normal liquor regulations apply. Alcohol is not to be served to guests under 18 years of age.
26. The school accepts no responsibility for private property left at the school

I/we agree to comply with all the conditions above

Name: _____

Date: ____ / ____ / ____

CCI Contract Indemnity Help Line

Catholic Church Insurances will be happy to assist you with advice or answer any specific questions you may have relating to contract indemnity.

Please call CCI on 1300 655 001 or email as follows:

Edmund Fernandez – efernandez@ccinsurances.com.au

Shane Hoyle – shoyle@ccinsurances.com.au

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Please note that CCI Claims Management Lessons should not be used or relied on as a substitute for detailed professional advice or as a basis for formulating decisions.

This publication should be read in conjunction with the policies and procedures of your organisation.