Lander & Rogers
Lawyers

Risk Management & Safety

Yachting Victoria Club Conference

Presented by:
Simon Merritt
Lawyer - Sports Business Group

Date:
8 August 2015

CLIENT CHOICE AWARDS 2015 FINALIST beaton
BRW. CLIENT CHOICE AWARDS 2014 FINALIST
BRW. CLIENT CHOICE AWARDS 2012 WINNER
BRW. CLIENT CHOICE AWARDS 2011 FINALIST
BRW. CLIENT CHOICE AWARDS 2010 FINALIST
BRW. CLIENT CHOICE AWARDS 2009 WINNER

Risk and risk management

- What is risk?

  "*Risk is the effect of uncertainty on objectives*".

- What is risk management?

  "Coordinated activities to direct and control an organisation with regard to risk".

Why manage risk?

- Generally:
  - Minimise liability
  - Ensure financial sustainability
  - Improve governance practices and meet compliance requirements
- Specifically:
  - Reduce the incidence of adverse activities that impact on strategic objectives
  - Enhance reputation
  - Ensure organisational sustainability, growth and continuity

Types of risks

- Physical risks
- Legal risks
- Financial risks
- Event risks
- Moral risks (eg. reputation, conduct and ethics)

Types of risks: *Physical*

- Injuries to participants & spectators

Types of risks: *Legal*

- Negligence & liabilities of organisers

"Inquiry blasts organiser of disastrous Kimberley ultramarathon: *A parliamentary committee has made damning findings against the organisers of last year's disastrous Kimberley ultramarathon"*

- ABC News: 17 August 2012

"Charges considered after cyclist dies in race"

- New Zealand Herald: 30 January 2006

Types of risks: *Financial*

- Revenue, staff, suppliers and other third parties

DSB Bankruptcy Hurts U.S. Speedskaters
by Jacqueline Palank, The Wall Street Journal, 23 October 2009

"*The after-shock of a bankruptcy in the Netherlands has rippled across the Atlantic to touch U.S. Speedskating, leaving the team without one of its key sponsors just months before the 2010 Winter Olympic Games*."

Types of risk: *Moral*

- Reputation, conduct and ethics

Statement from USADA CEO Travis T. Tygart:

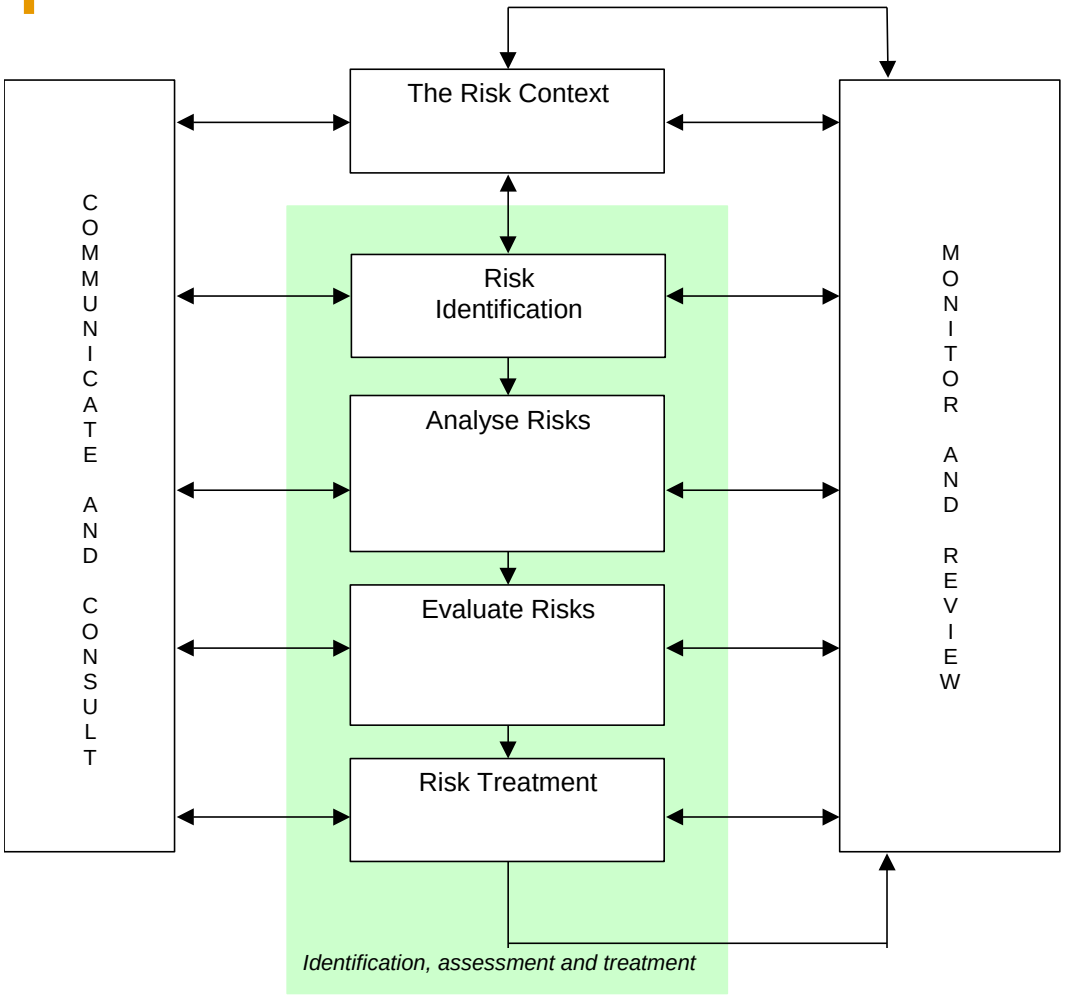
"*The evidence of the US Postal Service Pro Cycling Team-run scheme is overwhelming and is in excess of 1000 pages, and includes sworn testimony from 26 people, including 15 riders with knowledge of the USPS Team's doping activities.* "

"*The evidence includes financial payments, emails, scientific data and laboratory test results that prove the use, possession and distribution of performance enhancing drugs by Lance Armstrong and confirm the disappointing truth about the deceptive activities of the USPS Team...*"

Risk management process

Adapted from:

International Standard on Risk Management
AS/NZS ISO 31000:2009



Identification

- Occurs within your Club's risk context
  - External
  - Internal
- Considerations:
  - Activities conducted
  - Incident or loss history
  - Operational procedures

Assessment and evaluation

Risk Ranking Matrix

			Consequences				
	Risk Categories		Insignificant	Minor	Medium	High	Extreme
			1	2	3	4	5
Likelihood	Almost Certain	A	Moderate	High	High	Extreme	Extreme
	Likely	B	Low	Moderate	High	Extreme	Extreme
	Possible	C	Low	Moderate	High	High	Extreme
	Unlikely	D	Low	Low	Moderate	High	High
	Rare	E	Low	Low	Low	Moderate	Moderate

Treatment and review

- Avoiding the risk
- Removing the source
- Changing the likelihood
- Transferring or sharing

- Monitor & review
- Learn
- Defined responsibilities
- Emerging risks

Race officials

- PRO, RO, OOD, Race Director

A legal duty of care will exist where it is reasonably foreseeable that a person will suffer an injury or loss as a result of the action or omission of another person

Volunteer protection

- Scope
  - Community organisations
  - Services on a voluntary basis
  - No liability
- Exclusions
  - Must be within scope and instructions
  - Not under the influence
  - Not breaking the law
- Transfer of liability – your Club

Legislative protection

- Concepts of risk and personal responsibility
  - Contributory negligence
  - Warnings
  - Waivers

OH&S legislation

- Is your Club an employer?
  - Employees
  - Independent contractors
- Duty to maintain a safe working environment for employees
  - As far as reasonably practicable
  - Further duties
- Duty to others – no exposure to health or safety risks
  - Arising from the Club's undertaking

OH&S legislation

- Officer liability?
  - Are they volunteers?
  - Exclusion from officer liability
- Harmonised WH&S legislation?
  - Definition of “worker”

Liability of directors / committee

- Directors' duties
  - Act in good faith for the benefit of the Club
  - Not act for an improper purpose
  - Act with care, skill and diligence
  - Avoid conflict of interest
  - No unauthorised disclosures
- Negligence
- Occupier's liability

Questions and Discussion

Our contact details

Simon Merritt
Lawyer
Lander & Rogers
Email: smerritt@landers.com.au
Phone: +61 3 9269 9579

This presentation cannot be regarded as legal advice. Although all care has been taken in preparing this presentation, readers must not alter their position or refrain from doing so in reliance on this presentation. In particular, the clauses included in this presentation are randomly selected from sample project documents and are not to be assumed to be drafting models. Where necessary, advice must be sought from competent legal practitioners. The author does not accept or undertake any duty of care relating to any part of this presentation.

Copyright©
This presentation is copyright. Apart from any fair dealing form the purpose of private study, research, criticism, or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission.
Inquiries should be addressed to the authors.

Creating a child-safe organisation

Yachting Victoria Club Forum
8 August 2015

Robyn Brooke and Debbie Boyse

Child safety

All children have the right to feel safe and to be safe all of the time

WOMEN & GIRLS IN SAILING

Women and girls in sailing

Sub-committee of Yachting Victoria (YV)

Removing the barriers for women in sailing

YV Strategic Plan - Goals

25% of commodores, committee members, coaches and instruction are female					
YEAR	2012-13	2013-14	2014-15	2015-16	2016-17
TARGET		16%	26%	33%	35%
ACTUAL	11%	22%	31%		

40% of members female					
YEAR	2012-13	2013-14	2014-15	2015-16	2016-17
TARGET		28%	34%	37%	40%
ACTUAL	25%	31%	32%		

The addition of "girls" (= children)

YACHTING VICTORIA

Inquiry into the handling of child abuse

January 2012:
Protecting Victoria's Vulnerable Children Inquiry (Cummins Inquiry)

April 2012:
Victorian Government initiates a parliamentary inquiry

November 2013:
Betrayal of Trust inquiry report tabled in Parliament

May 2014:
Victorian Government response to *Betrayal of Trust*

Minimum standards

1. a child safe policy or statement of commitment to protect children from abuse;
2. a code of conduct that establishes clear expectations for appropriate behaviour;
3. human resources practices that reduce the risk of offending by new and existing personnel, including through recruitment and selection (including undertaking WWC Checks), training and support, supervision and performance management;
4. processes for responding to and reporting allegations of abuse;
5. a risk management approach;
6. mechanisms to promote the participation and empowerment of children; and
7. strategies to embed an organisational culture of child safety.

WOMEN & GIRLS IN SAILING

Can we make our clubs safer?

YACHTING VICTORIA

Barriers to becoming Child Safe

What are the barriers and challenges?

Complacency

Lack of resources

Fear

Denial

Competing priorities

Entrenched culture

WOMEN & GIRLS IN SAILING

Can we improve our recruitment?

YACHTING VICTORIA

WOMEN & GIRLS IN SAILING

Is your club child safe?

YACHTING VICTORIA

Child Safe Objectives

- To build safer organisations for children and young people
- To reduce the risk of abuse & harm of children and young people in your care
- To develop an aware & open culture to minimise opportunities for child abuse to take place

Grooming Techniques

To get close to children, people who sexually offend use 'grooming' techniques which allow them to form 'special' or 'power-based' relationships with children.

- Paying special attention to a child and making them feel special
- Buying children lollies, sporting equipment, swap cards and other things a child may like or value
- Using threats, bribes and/or physical violence
- Asking children to keep secrets from parents, siblings & friends

Visible grooming

- Situations where adults are involved with a child more than you would expect in their role/relationship
- Where an adult seems to be particularly interested in a particular child or activities that allow for additional intimacy eg. overnights, swimming, time alone
- Situations where a child is given gifts or taken on outings which are unexpected or unusual in any way
- A child seems to have a special relationship with aspects to it that are ‘private’ and do not involve other adults or children
- Where a child may be keeping secrets or have built a relationship with a secret friend

ACCESS & OPPORTUNITY

WOMEN & GIRLS IN SAILING

Prevention

YACHTING VICTORIA

WOMEN & GIRLS IN SAILING

Training and support

YACHTING VICTORIA

Purpose of child safe standards

- Drive cultural change
- Manage risk in organisations working with children
- Focus on education and capacity-building
- Ensuring policies are translated into practice

WOMEN & GIRLS IN SAILING

The proposed child safe standards

1. Statement of a commitment to child safety (child safe policy)
2. A code of conduct that establishes clear expectations for appropriate behaviour
3. Human resources practices that reduce the risk of harm to children by new and existing personnel.

YACHTING VICTORIA

The proposed child safe standards

4. Processes for responding to and reporting suspected harm to children
5. A risk management approach
6. Mechanisms to promote the participation and empowerment of children
7. Strategies to embed an organisational culture of child safety

Duty of Care

Duty of Care is a common law concept that refers to the responsibilities of organisations to provide children with an adequate level of protection against harm.

It is the duty of the organisation to protect children from all reasonably foreseeable risk of injury.

Reasonable care in any given case will be determined objectively by a court.

Negligence

For someone to succeed in an action of negligence against an organisation they must establish:

1. The organisation owed a duty of care to the person

2. The standard of care was breached

3. The act occurred

4. This breach has caused the person to suffer some form of damage.

Examples include…

- Failure to do adequate reference checking
- Not responding to complaints/allegations
- Lack of adequate supervision/guidance for staff

WOMEN & GIRLS IN SAILING

Risk identification and management tool

SAILING	Level of Risk	Strategy for preventing or minimising risk
Parents attending a weekend regatta as a volunteer		

YACHTING VICTORIA

WOMEN & GIRLS IN SAILING

Why a child protection policy ?

- Demonstrates commitment to keeping children safe from harm and abuse
- Educates everyone about child abuse and the rights of children
- Provides a practical guide to the protection of children from abuse within the organisation
- Provides a risk management strategy to prevent child abuse
- Protects staff and volunteers from unfair processes

Child Protection Policy

Suggested format for a Policy

- ✓ Title
- ✓ Statement
- ✓ Who the Policy applies to
- ✓ Child Abuse
- ✓ Legislative requirements
- ✓ Promotion of child safe message
- ✓ Appointment of a designated Child Safety Officer
- ✓ Reporting Process
- ✓ Risk Management
- ✓ Recruitment, Selection and Screening
- ✓ Child and Young People participation and empowerment
- ✓ Internet safety
- ✓ Code of Conduct
- ✓ Review and monitoring

Creating clear boundaries

A Code of Conduct

- is a straightforward list of do's and don'ts for staff and volunteers
- minimises grey areas and highlights inappropriate behaviours
- lets everyone know the rules

A Code of Conduct

Everyone should be aware of the Code of Conduct.

Keep it prominently displayed.

Regularly review your Code of Conduct so guidelines are up to date and working.

Example Code of Conduct

WE WILL NOT:

- ✓ Seek to make contact and spend time with any child or young person outside the program times.
- ✓ Use inappropriate, offensive or discriminatory language when speaking with a child or young person.
- ✓ Use unwarranted, unwanted and/or inappropriate touching of a child or young person.

WOMEN & GIRLS IN SAILING

Managing Complaints

All groups, programs and organisations working with children and young people *must* have a reporting procedure in place.

An effective complaints management procedure is one that is transparent, accessible, up to date, fair to all parties, and mandatory.

The process is fundamental to the outcome.

Managing complaints of abuse

Raising and Reporting Concerns of Child Abuse

Issues to be discussed include the:

- Legal Considerations
- Importance of raising concerns
- Roles & Responsibilities
- Recognition of abuse
- Response to disclosure
- Confidentiality measures
- Response & mandatory reporting
- Internal organisational reporting procedure

Managing complaints of abuse

The reporting procedure will need to address:

- What to report
- When to report
- Who to report to
- How to report
- Follow-up
- State/Territory specific legislation and requirements

Benefits of empowering children

Children who are encouraged to express their views are less vulnerable to abuse and better able to contribute towards their own protection.

Organisations can help children to speak up by:

- Kids Feedback Form
- Kids Code of Conduct
- Child friendly Reporting Process
- Child Safety Officer or contact person for children and young people.
- Include young people on interview panels

The value add …

- Family decision makers are attracted to child safe organisations.
- Promoting yacht clubs as child safe is a deterrent for those who seek to harm children
- We will know that we are doing as much as we can to keep our children and young people safe.

Happy childhoods……