

Insurance for OSCAR Programmes *(From the "OSCAR Legal Kit")*

Insurance is a risk management tool. Where the level of risk is perceived to be low, insurance coverage might be a lower priority. Any decision to get insurance coverage should weigh up the level of risk against the cost and extent of the insurance coverage being offered.

For insurance coverage to apply there must be an actual loss – this could be physical or mental injury, damage to property, loss of earnings or other financial loss. You cannot insure against deliberate disregard for the law. Also an insured party must genuinely attempt to follow good practices. Negligent actions may be excluded from coverage in some policies. If a programme is not operating in a professionally competent manner then its insurance policy may be void. Insurance may provide no protection for programmes that are operating without policies and procedures, and following appropriate staffing and safety practices.

Insurance companies or insurance brokers may offer packages that combine various types of insurance policies to suit an organisation's particular needs. The following is a general guide only and explains what may be typically covered by some policy types.

We strongly recommend that you firstly question your insurance broker or company about their various policies, using the following information as a guide. What policies would they recommend for your organisation? What situations are and aren't covered by each policy? What level of coverage is required. Also carefully examine the actual coverage details of any policy being offered.

1. BUILDING AND ASSETS. OSCAR programmes should consider their need for insurance coverage in respect of the buildings they occupy and their equipment. The building owner is usually responsible for insuring the building and its chattels (furnishings and appliances). The OSCAR programme is usually responsible for insuring its own equipment.

Any agreement with the building owner should stipulate responsibility for minor damage. The building insurance policy will usually have an excess. This is a dollar amount below which the policy will not cover the cost of damage. Something like a broken window may fall below this amount. The OSCAR programme may be expected to cover costs of damage up to the amount of the excess.

Programmes who own their transport need to ensure their motor vehicle insurance is valid. Coverage should include private vehicles being used for work purposes.

2. PUBLIC LIABILITY. Insurance companies offer public liability policies to cover damage to the property of third parties for which the insured organisation is legally liable. ("Third party" means someone who is not staff, management or a client/customer of the insured organisation.)

Public liability may for instance cover damage caused by a ball that went over the fence of an OSCAR programme and did some damage to a neighbouring property, or hit a car parked on the street. More seriously, for a programme that is renting a school facility of community hall, it may protect the programme against potential liability if the building was seriously damaged e.g. by a fire, and the programme was seen as somehow responsible. Public liability policies are subject to an excess and an OSCAR programme would have to weigh up the costs of the policy against the likely costs of damage to "third parties" as a result of activities at the programme.

Public liability does not usually provide coverage for injury, unless that injury is not covered by ACC.

3. EMPLOYERS' LIABILITY. Employers liability insurance can cover employer's costs for legal proceedings taken by a employee, for injuries not covered by ACC e.g. stress-related injuries, gradually developing conditions. The policy may or may not include volunteers. There are different policies to cover liability resulting from employment disputes and grievances, called employment practices or employment disputes policies.

4. STATUTORY LIABILITY. This will cover organisations who face liabilities under statutory legislation, such as the Acts outlined in this book. If the programme has been acting negligently this sort of policy may not provide coverage. This policy should cover the costs of legal proceedings, as well as fines imposed under most NZ legislation. But it is not possible to insure against fines imposed by OSH. Note: OSH often impose penalties on employers using the reparations process, which can be covered by insurance policies.

5. PROFESSIONAL INDEMNITY. Some OSCAR programmes have asked if they should have some kind of insurance coverage in case of a personal lawsuit instigated by parents of a child injured at the programme. In most cases of accidental personal injury, current ACC law prohibits claims for damages where the injury is covered by ACC legislation.

Professional indemnity insurance does not usually cover losses caused by injury. It usually concerns other forms of loss, where something goes wrong with the service being provided, or there is a failure of duty of care. This could be where a child is lost or taken by an unauthorised person, and there was some costs incurred by the parent that were not relating to an ACC-covered injury. This might include counselling costs for trauma or loss of earnings from their job.

Other possible insurance coverage:

- Director's and officers or trustee's liability policy
- Fidelity policy – covering theft of cash or property by a staff member