

MACQUARIE FOOTBALL LIMITED A.C.N. 050 293 153

NEWCASTLE FOOTBALL LIMITED A.C.N. 052 054 163

HUNTER VALLEY FOOTBALL INCORPORATED

RISK MANAGEMENT POLICY

Issued by the Joint Board of Directors of Macquarie Football Limited, Newcastle Football Limited and Hunter Valley Football Incorporated.

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POLICY ON RISK MANAGEMENT

1.0 INTRODUCTION/DEFINITIONS

The business of operating a sporting Club increases in complexity with time. As the world, and specifically the sporting community, increasingly utilizes the courts to settle legal disputes, it has become important that Clubs be protected from the costs of both legal defence and damages.

The following activities form the basis of a football sporting Club:

- inviting the community to participate and/or spectator in the sport;
- inviting the community to assist in the administration of the Club;
- providing football sporting facilities – grounds and equipment;
- providing social facilities – bar, food preparation, entertainment.

By offering such a sporting Club to the community, the Club becomes responsible for the safety of the individuals who enter the Club, both members and visitors; this responsibility is known as a Duty of Care and forms the basis from which legal liability extends.

(a) WHAT IS PUBLIC LIABILITY?

The concept of public liability involves the legal liability of the Club to pay compensation for any breach of a general duty of care which results in personal injury or property damage to a third party(ies). In order for a prospective Claimant or Plaintiff to succeed in a public liability claim, it is necessary to establish whether negligence can be proven against the Club or its employees/agents.

(b) WHAT IS NEGLIGENCE?

Negligence is the neglect of some care which a party is bound to exercise towards another party.

In order for an injured party or party suffering a loss to succeed in a negligence action, various components of the concept of negligence must be established:

- * there must be a duty of care owed to the injured person or party suffering loss;
- * there must be a breach of the duty of care owed;
- * the breach of duty must have caused the injury or loss.

The concept of negligence in this context is unique because it imposes a duty/ obligation on a party (Clubs) where there may be no contractual relationship between the parties ie no contractual relationship between the Club and the injured party/ party suffering the alleged loss.

(c) DUTY OF CARE – TO WHOM IS THIS OWED?

The Courts have consistently held that the Club must take reasonable care to avoid acts or omissions that can reasonably be foreseen as likely to injure the 'neighbour' (persons so closely and directly affected when the Club is directing its mind to the acts or omissions that are called into question that should have them in contemplation).

One of the tests to ascertain whether duty of care is owed is the proximity of the parties ie to see what the physical or commercial closeness of the parties is.

In the case of a Third Party using Club facilities, due to the proximity of the Third Party to the Club, the Club should have the Third Party in contemplation ie Clubs must ensure that the area which is used is safe. The Club owes the Third Party a Duty of Care.

(d) BREACH OF DUTY – UNDER WHAT CIRCUMSTANCES DOES IT OCCUR?

The Courts have held that the STANDARD OF CARE required by owners/occupiers of property is that of a 'reasonable person'. This means Clubs are required to take reasonable care/steps to protect users etc against reasonable probabilities, not fantastic possibilities. In deciding whether or not a breach has occurred, the courts often place themselves in the situation of the Club or its Official and ask what a reasonably prudent officer would have done, or not done, in similar circumstances. This is referred to as the 'reasonable person' test. If the Court concludes that the Club or its Official did not take reasonable steps to ensure the safety of a user so as to protect that person from the reasonable probability that occurred then the Court will conclude that there has been a breach of duty of care owed to the user.

(e) CAUSATION

The claimant must establish that the loss and/or injury was caused by the negligence of the Club. The loss/injury cannot be the result of the negligence of another person/entity who is in no way connected to the Club; a pre-existing injury or illness of the claimant; a loss sustained due to a downturn in the economy; the Third Party's own fault or mistake (referred to as contributory negligence).

CONTRIBUTORY NEGLIGENCE

In assessing liability a Court will examine by what degree a plaintiff has contributed to the loss/injury; if the Court concludes that a plaintiff has contributed to the loss/injury, the Court will find there has been contributory negligence. It will then assess by what degree, or percentage, the plaintiff has contributed to his/her own injury/loss eg if a Court decides that the plaintiff contributed to the loss in the order of 50%, it will then discount the plaintiff's award of damages by 50%. Clearly the establishment of contributory negligence is a most important aspect in determination of damages.

(f) **IMPORTANCE OF MANAGEMENT OF PUBLIC LIABILITY**

The trend through the world is to move towards a more litigious society with community members more readily seeking compensation for an individual or organisation's negligent act. When this trend is paired with the upwardly spiralling trend in costs associated with the settlement of public liability claims, the reason for significant increases in insurance premiums in recent times is clear.

The most effective method of controlling these costs is the effective management of risk exposures and the minimizing of the likelihood and severity of incidents that do occur. The development by a Club of appropriate policies and procedures together with the implementation of a structured approach to the management of public liability exposures not only reduces the frequency of incidents occurring but also provides a documented procedure for minimizing the effects of such incidents.

The existence and verification of these procedures will also assist the Club in substantiating that it has taken all reasonable steps in controlling the environment to which the public is exposed. These procedures will ensure that the Club has not breached its duty of care to the public and its patrons and will assist in defending any claim brought against the Club for negligence.

2.0 RISK MANAGEMENT

Risk Management (or Risk Reduction or Risk Minimisation) is a procedure to reduce potential legal liability. It is a proactive strategy (unlike insurance which is a reactive tool aimed at reducing the risk to a Club when the risk has arisen) in that it attempts to address potential problem areas before they actually lead to reactively defending legal proceedings. It aims at a safer environment and 'legally safer' operating procedures.

There are five components to risk management:

- Risk Identification
- Risk Assessment
- Design of a Risk Elimination or Reduction Plan
- Implementation of the Plan
- Evaluation and Modification of the Plan

2.01 RISK IDENTIFICATION

The first step is to identify what risks exist or may exist in the future. Consultation with all persons who are regularly involved in the sport – administrators, coaches, players – is essential in this identification of risk areas. There is no substitute for actual practical experience in working out why accidents occur or what presents a potential problem. Others who may be consulted include a medical person with expertise in the area, an administrator with expertise in developing policies and procedures and a risk manager or lawyer to provide legal input.

Factors that must be considered in identifying risks include:

- the age of participants or users – children and adults are treated differently in law; children require extra care for safety;
- the type of activities involved;
- injury history including type of injury and cause;
- how operation procedures are conducted and any previous problems.

Some examples of general risks to Clubs include:

- loss of property through usual risks of fire and burglary;
- loss of assets through legal action over injuries caused by negligence, breach of contract, breach of criminal law, trade practices breaches, occupational health and safety breaches;
- legal costs associated with legal actions;
- loss of sponsorship opportunities and member and general public confidence due to adverse publicity;
- loss of elite level players through injury which can cause further financial loss due to lost prize money, sponsorship or media and public interest.

2.02 RISK ASSESSMENT

Once identified, risks must be assessed. This means considering how often a type of accident or incident occurs, how serious an injury or what loss an incident causes. If a particular type of accident occurs regularly with injuries being caused, or if a particular piece of equipment causes serious injury such as spinal damage, then these are assessed as high risks. Each identified risk must be given an assessment (eg high/medium/low). Once risks have been assessed it is easier to determine which problem areas require the most urgent attention.

2.03 DESIGNING A RISK MINIMISATION PLAN

This is the task of working out what can be done to eliminate or reduce the risks.

When designing a plan the issue of 'reasonableness' must be kept in mind – some methods of reducing risks may be impractical or unreasonable due to extreme expense.

It can be a fine line in deciding what is reasonable and what is not eg if an item of equipment has proven to be particularly dangerous and it is extremely costly to replace, the best option (if in fact this is an option) may be to simply remove the item completely.

2.04 IMPLEMENTATION

A Risk Management Plan is useless if it is not implemented. The initial step of implementation is usually to produce a Risk Management Manual for the Club. This will include a statement of the purpose of the plan and procedures to be followed. It is essential that it be recognized that putting such a manual and plan in place is important, but if it is not followed and an accident occurs in a situation for which the manual provides a safety recommendation, then that departure from the manual could be used as a basis for a negligence action. It is essential that a Risk Management Manual be clearly written and provided to all relevant personnel.

2.05 EVALUATION AND MODIFICATION

The keeping of records and the continued evaluation of a Risk Management Plan in the light of such records is crucial. Risk Management procedure should include the documentation of any accidents as well as information on the effectiveness of the risk management procedures. Statistics on continuing injuries or accident occurrences should be used to determine whether there are specific activities that require either increased precautions or supervision.

A Risk Management Plan cannot remain static. Risk can change according to changes in the law, development of safe practices and techniques, and developing technology. Constant evaluation and updating must be done to take account of developing trends and the Club's own experience.

3.0 INSURANCE COVER

3.01 LIABILITY INSURANCE

3.01.01 PUBLIC LIABILITY

This Public Liability Policy covers the Club if it is found to be negligent in its actions that results in either bodily injury or property damage to a third party. This policy does not cover the third party who was injured or had its property damaged; it covers the Club if the third party decides to take legal action against the Club.

Claim examples include any incident where a third party suffers bodily injury or property damage due to the negligence of the Club or any of its members eg slipping on a slippery floor; insufficient padding on goal posts; exposed sprinkler heads; unprotected fences; unsafe kitchen or bar area.

3.01.02 PRODUCTS LIABILITY

This Products Liability Policy covers the Club for legal liability arising from the manufacture, distribution and/or sale of products, including bar and canteen sales and merchandise. The policy cover is for the Club, not the third part who has suffered damages.

Claim examples include the serving/selling of food/beverage that is unfit for human consumption (ie well past its 'use-by' date, causes food poisoning); the sale of faulty equipment such as protective equipment, padding, helmets etc.

3.01.03 ERRORS AND OMISSIONS

This policy covers the coaches, trainers and referees of the Club if they are found to be negligent by way of the professional advice offered. If that advice results in bodily injury to a third party the person who has given that advice can be held legally liable and ordered to pay damages. This policy protects such persons from such events.

Claim examples include claims brought against the Club as a result of negligent actions by employees (including volunteers). Examples of such actions include actions contrary to the Trade Practices Act or equivalent Fair Trading Act; libel or slander; dishonesty of employees, fidelity; loss of documents.

3.01.04 DIRECTORS AND OFFICERS LIABILITY

This policy protects the Directors, Officers and Decision-Makers of the Club if they have committed a wrongful act or omission and, as a result of this act or omission, a financial loss is suffered by the claimant.

An example of a situation covered by this policy is the Club decides to purchase a large number of specific items with the idea that these can be on-sold to teams at a reduced retail price; however, the teams do not buy and so the Club is left to foot the bill; the Club is unable to meet the debt and is sued by the creditor for the financial loss. The Directors of the Club can be held personally liable for the loss and ordered to pay the outstanding amount from their personal finances. If this was to occur, the Directors and Officers Liability Policy would protect the Directors from such personal loss.

3.02 PARTICIPANT INJURY INSURANCE

3.02.01 MEDICAL INSURANCE – NON-MEDICARE MEDICAL

This policy covers the cost of treatment received by a Player if he/she is injured whilst playing or training. The reason for the term 'Non-Medicare' is that sports insurance companies are unable to cover any medical expenses that are covered by Medicare (contrary to the Health Act).

This policy covers part cost of physiotherapy, chiropractic, private hospital fees, ambulance, masseurs, osteopaths, naturopaths and dentists.

The policy does not cover any costs for doctors, surgeons, X-ray, public hospital fees or anaesthetists. If there is a gap between cost and Medicare refund, the policy cannot pay this – this is illegal.

As this insurance is under two coverages – the NSW Sporting Injuries Scheme and the Insurance Cover arranged in bulk through Northern NSW Football as part of every Player's registration – each participant must familiarize himself/herself with the actual coverage provided and in particular must understand the limitations of the coverage provided.

A Player may take out additional medical insurance coverage at his/her own expense and by his/her own arrangement.

3.02.02 LOSS OF INCOME INSURANCE

This policy covers (to some extent) the income lost by a Player not being able to work due to an injury suffered whilst playing/training; the Player must be in permanent full-time, part-time or casual employment at the time of injury.

The insurance cover for loss of income provided by the policy arranged in bulk through Northern NSW Football as part of every Senior or Working Player's registration is limited in scope – each participant should familiarize himself/herself with the conditions of coverage and in particular must understand the limitations of the coverage provided.

A Player may take out additional loss of income insurance coverage at his/her own expense and by his/her own arrangement.

4.0 RISK MANAGEMENT SYSTEM

The Club should set up a Risk Management System with seven individual stages for effective implementation.

4.01 ESTABLISHING POLICY AND PROCEDURES

This process will establish a commitment to risk management and ensure that the existing policies and procedures meet the targeted objectives of the Club.

4.02 PLANNED INSPECTIONS AND CHECKLISTS

Documents of checklists need to be developed to assist with risk related inspections. These should be used in conjunction with a diary system of planned activities, inspections, incident responses, incident reports and training that occur on a regular basis in the Club. Sound management practice would be for the checklists to be used on a rotational basis so that all elements are checked at least monthly. Checklists and inspections should be logged into the Monthly Risk Report; entries should be reviewed on a weekly basis. Each checklist should be prepared such that its completion requires only ticking in a Yes or No column for each item checked and signing/dating so that its completion is not onerous.

Examples of risk management checklists would include:

- Grounds and Playing Conditions
- Match Day (field of play, change rooms safety)
- General Housekeeping (all facilities safety)
- Fire Safety
- First Aid
- Emergency Response

4.03 INCIDENT RESPONSE GUIDES

Incident Response Guides are cards developed to deal with particular incidents. Each should show the specific incident, objective and hazards, emergency procedure set out in two columns headed 'if this happens' and 'do this'. The actions listed under 'do this' will include reporting on the incident in the appropriate manner under the risk management plan.

Examples of Incident Response Guides required would include:

- Spill Safety
- Theft and Break and Enter
- Responsible Serving of Alcohol (if applicable)
- Assault
- Car Park Accident
- Trespassers
- Needle-Stick Safety
- Security
- Electricity/Gas/Water Safety
- Emergency Evacuation
- Food/Beverage Poisoning
- Injury
- Wilful Damage of Property
- Construction Control
- Major Accident Control

4.04 INCIDENT REPORTING

When an incident occurs, the order of initial procedures to be followed shall be to attend to the person if injury is involved; do not admit liability; investigate immediately; contact Club management.

The Incident Report should be filled out immediately after the incident has been attended to. The Club member involved must never admit liability; should obtain the information for the Incident Report Form with discretion and formality; and where possible take photos immediately after the incident as these are useful in the investigation.

4.04.01 INVESTIGATION

Accident investigation is a systematic approach for removing, or at least controlling, the unsafe acts and conditions which are the basis of all accidents.

Any accident investigation should set out with the view of getting cooperation and involvement from all people.

It is important that a comprehensive analysis of all accidents including near misses is always undertaken.

Important information is obtained by correctly investigating the incident and completing the Incident Report Form.

4.04.02 INCIDENT REPORT FORM

Any photographs taken immediately after the incident can be added to the Incident Report Form.

This Form is designed to gather all the basic facts (who/when/where/how/why) and the reasons for the accident.

The Club can design its own Incident Report Form or it can adapt the sample that is included in the Appendix to this Policy Document.

4.05 SAFETY DEFECT CARD

The Safety Defect Card is to be filled out following the observation of deficiencies or hazards during a routine inspection or after an incident.

This Safety Defect Card should be numbered and recorded on the Monthly Activity Report and a copy must be filed in the Safety Defect Register.

The Club can design its own Safety Defect Card or it can adapt the sample that is included in the Appendix to this Policy Document.

4.06 RISK MANAGEMENT TRAINING

One of the key elements of a Risk Management Program is the ownership by personnel and managers within the Club – they must be given the skills and knowledge to fully implement the program. Training should be done in a structured training format for instruction and feedback for the support and development of ongoing Risk Management Activities.

4.06.01 ISSUES OF RISK MANAGEMENT TRAINING

The key components of a Risk Management Training Program must incorporate the following issues:

What is Risk Management? Why is Risk Management Important? Risk Identification, Evaluation and Control; Management of Personnel Health and Safety; Management of Incidents and Injuries.

4.06.02 CRITERIA FOR TRAINING OF PERSONNEL

The objective of the training and education program is for Club personnel to gain practical knowledge of risk management principles and how to relate the requirements of these principles relating to people, assets, legal liabilities, financial and intangible risk exposures within the Club's operation.

The development and delivery principles used for personnel training and management within the Club are based on the criteria:

- * establish the target group
- * conduct training needs analysis to become familiar with the needs of participants and develop the training program
- * vary delivery mode and deliverers
- * Limit sessions to 1 hour maximum
- * offer a wide range of aids/tools/presentation-training techniques
- * involve participants and actively encourage participation
- * treat participants with respect and acknowledge past learning
- * view areas of operation to include 'local knowledge' in presentations

At the conclusion of training participants shall have a clear understanding of the general principles of risk management together with an understanding of how to implement the systems based approach to managing risk.

It is reiterated how important it is to provide structured and formalised (documented) training and education of members of the Club for prevention and mitigation of losses.

4.07 MANAGEMENT ACTION AND REVIEW

The final stage is for Club management to develop prioritized risk control recommendations and to ensure ongoing effective implementation. Club management must monitor and review current status of Risk Management initiatives to ensure their completion and sign-off. This shall include:

- Monthly Risk Reports to be filled out as a planned monthly routine, based on the inspections and training at the Club;
- Activity Reports – a detailed breakdown of the planned activities and incident reports – to be filled in for all planned activities and all incidents.

The Monthly Risk Report and the Activity Report is to be submitted, reviewed and filed by the delegated Club Official each month. These reports are to regularly audited by Club Management.

The Club can prepare a Monthly Risk Report pro forma; a copy of such a pro forma which may be adapted for Club use is in the Appendix to this Policy Document.

4.08 RISK MANAGEMENT PROCESS OUTLINE

5.0 **APPENDICES – SAMPLE DOCUMENTS**

The following documents are attached as sample documents which may be adapted for Club use.

5.01 INCIDENT REPORT FORM

5.02 SAFETY DEFECT CARD

5.03 MONTHLY RISK REPORT

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