



Broker Education Forum:

Running the Risk:

Risk Management II for the Not-for-Profit Board

TODAY'S FORMAT

PART 1 BROKER FORUM

- ❑ Risk Management II for NFP Boards
- ❑ CEP Grant Recipient presentation

Morning tea

PART 2 – PRODUCT LAUNCH

- ❑ Management Liability

Lunch

PART 1. BROKER FORUM

1. Introduction and Ansvar Overview

Warren Hutcheon - CEO, Ansvar Insurance

2. Risk Management for NFP Boards

Toby Barrie, Partner, DLA Piper

3. Q&A Panel

Toby Barrie (DLA Piper)

Richard Wyatt, Kerry Thom, Phil Gare (Ansvar)

4. CEP Grant Recipient

Warren Mahoney, Youth Focus



Ansvar Insurance

Warren Hutcheon
CEO, Ansvar Insurance

Ansvar Insurance

Aligned with the NFP Sector



ALLCHURCHES TRUST LIMITED

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ECCLESIASTICAL INSURANCE GROUP



Ecclesiastical

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ansvar
insurance



Ansvar Insurance

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Care



Community



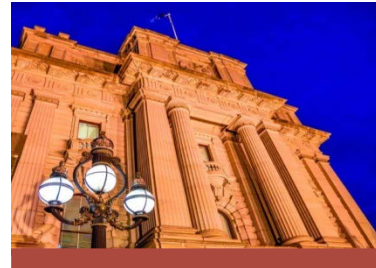
Faith



Education

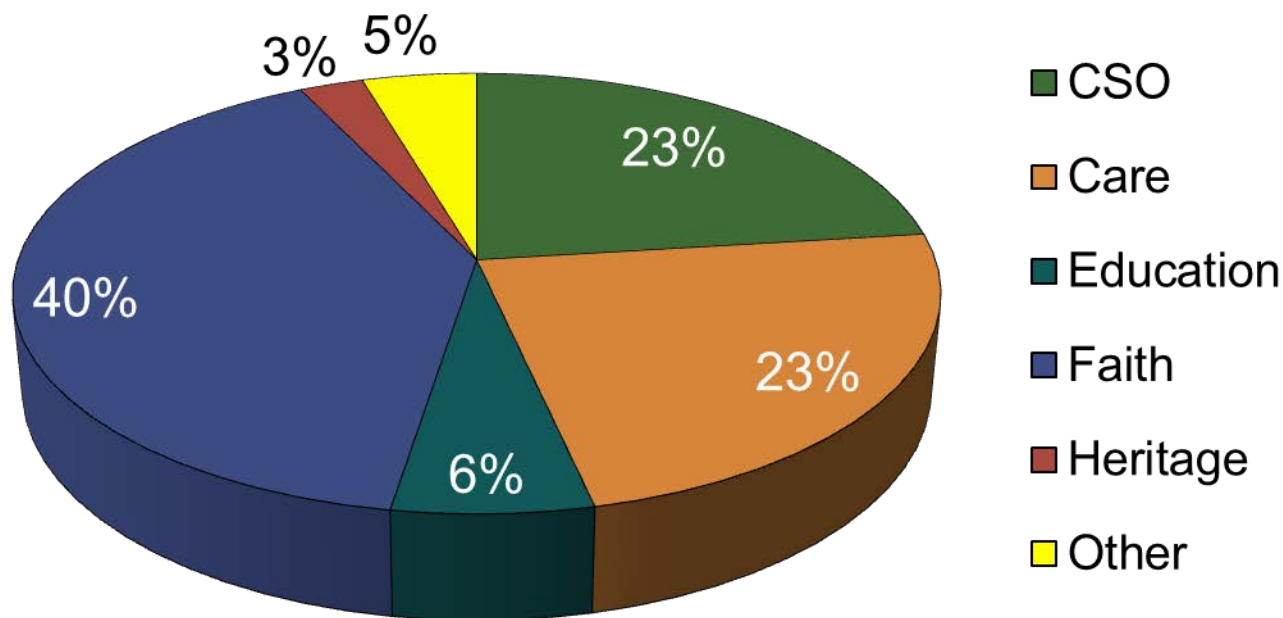


Heritage



Ansvar Insurance

2014 GWP by customer sector



Community Investment

Ansvar provides support to community groups and organisations through:

- ☐ Strategic Partnerships
- ☐ Sponsorships
- ☐ Donations
- ☐ Staff Volunteer Days
- ☐ Community Education Program Grants

Community Education Program

- ❑ Established 1994
- ❑ Focus on Australian youth
- ❑ Grants up to \$50,000
- ❑ Targets education and life skills programs
- ❑ Supporting those who support others
- ❑ Contributed over \$10 million in 20 years



Community Education Program

2015 : \$240,000 donated to seven recipients



Community Services Sector

- ❑ 600,000 NFP entities in Australia
- ❑ 60,000 charities
- ❑ 4% (\$43 billion) of Australia's GDP
- ❑ 7% growth per annum
- ❑ 1 million employees
- ❑ 6 million volunteers



RISK MANAGEMENT FOR NFP BOARDS

Toby Barrie

Partner, DLA Piper





Ansvar Broker Forums Running the Risk: Risk Management for the NFP Board

29 April 2015

Toby Barrie, Partner, DLA Piper Australia

Perth

April 2015

1

NFP officers are subject to directors' duties.
Misconception that as the role is unpaid, the duties are in some manner different to those of "ordinary" corporations.

2

Boards may reduce risk through education, due diligence in all aspects of business, and increased awareness of potential for personal liabilities.

3

Boards may reduce exposure to loss and potential personal liability with appropriate insurance.

4

Key issues for insurance program:

- Breadth of cover
- Limit of indemnity
- Defence costs
- Separate representation due to conflict issues

1. Duties under the *Corporations Act*
2. Duties relating to employment and workplace safety
3. Defences and protections for directors
4. Reducing the risk
5. Crisis management and mitigating loss

- 1 What is a not for profit?
Can range from a global charity to a local sporting or hobby association.
- 2 Who is a director? s 9 Corporations Act, definition under policy of insurance.
- 3 Who is an officer? s 9 Corporations Act, definition under policy of insurance. Wider than director (persons that participate in making decisions).

- Increased focus on Directors and Officers across all areas (civil claims and investigations)
- *Corporations Act 2001*
- Duties:
 - To discharge their duties with care, skill and diligence
 - To act in good faith in the best interests of the corporation and for a proper purpose
 - To not improperly use information or their position
 - To disclose and manage conflicts of interest; and
 - To not allow insolvent trading

- Sections 180-183 provide the civil obligations
- Section 184: Criminal offences
- A director or other office or a corporation commits an offence:
 1. If they are reckless or intentionally dishonest, and fail to exercise their powers and duties in good faith, in the best interests of the corporation, or for a proper purpose.
 2. If they use their position dishonestly with the intention of gaining advantage for themselves, or causing detriment to the corporation, or recklessly as to whether they may gain an advantage or cause detriment.
- A person commits an offence if they obtain information because they are or have been a director or officer, and they use that information dishonestly.

- **EXAMPLE:** Duty to act with care, skill and diligence
- A large NFP sporting association is required to produce annual financial reports.
- One of the directors of the NFP has a background in accounting.
- As the end of the financial year approaches the director finds himself inundated with work, and signs off on a draft of the report (prepared by one of the members) without reading it.
- The report is used to attain funding from government and private sources. As a result of errors contained in the report, government funding is withdrawn and the private financiers refuse to provide further funding. The club is closed and all assets liquidated.

- Significant growth. Significant sanctions for contravention.
- *Occupational Safety and Health Act 1984*
- Duty to uphold standards of work health and safety
- Required to:
 - ✓ Have knowledge of work health and safety matters
 - ✓ Provide and maintain safe workplaces and systems of work
 - ✓ Provide training, and adequate protective gear when necessary
 - ✓ Provide resources to identify and eliminate hazards and risks
 - ✓ Implement, monitor and review safety procedures
 - ✓ Consult and cooperate with safety and health representatives

- Duties may be owed by the NFP as a body corporate or directors or officers individually
 - Duties are owed to employees and to any person at the workplace or affected by the work, including volunteers and visitors
 - Penalties OSH Act:
 - If the breach is caused by gross negligence: \$250 000* - \$625 000
 - If the breach causes death: \$200 000 - \$500 000
 - Otherwise: \$100 000 - \$250 000
- *and up to 2 years' imprisonment for individuals

- **EXAMPLE:** Hazardous chemical accident
- A local cricket club operates a bar as part of its clubrooms. It employs a number of casual bar staff. Its funds are fairly limited and the bar staff are responsible for the cleaning.
- One day a new staff member is cleaning out the kegs (it is a ye olde cricket club so uses wooden kegs). He's been told to disassemble the keg and prepare a diluted cleaning solution, and no one tells him to wear gloves. While he is preparing the solution he slips and spills the concentrate on himself, suffering chemical burns to his arms (the horse that pulls the drinks cart with the keg onto the ground is thankfully ok).

- Liability may arise if:
 - The club does not have any resources or procedures in place to identify, minimise or eliminate risks and hazards
 - The club has procedures but they are not sufficient to provide a safe place of work
- The risk of liability may be reduced if:
 - The club has up-to-date knowledge of work health and safety matters
 - The club has dedicated safety procedures and training for staff members, and that these procedures are regularly reviewed and monitored
 - Sufficient protective gear is provided to staff where necessary

- Exponential growth in EPL claims across all businesses
- *Fair Work Act 2009*
- Duty to prevent or minimise bullying, harassment, and discrimination
- Required to:
 - ✓ Have official policies and procedures
 - ✓ Provide induction and ongoing training
 - ✓ Respond to issues
 - ✓ Review

- **EXAMPLE: Sexual harassment**
- A national NFP provides employment for people with disabilities. A young woman with an intellectual disability works at the organisation three days a week, and travels to and from work on a bus service provided by the organisation.
- A complaint is made on the young woman's behalf by her mother alleging that one of the company's bus drivers had been making inappropriate remarks of a sexual nature. The organisation conducts an investigation but finds no evidence, so no further action is taken.
- Later, another employee provides a recording of the bus driver making inappropriate remarks of a sexual nature to the young woman. The organisation conducts a further investigation and the bus driver's employment is terminated.

- Liability may arise if:
 - The NFP does not have a dedicated sexual harassment policy or sexual harassment training; this includes the need to provide specific examples of what constitutes sexual harassment being provided to the NFP staff
 - Given the nature of the NFP, a higher standard of training would be required for staff who deal with other employees who have an intellectual impairment
 - The inadequate handling of the original complaint could constitute part of an overall failure to "take reasonable steps" to prevent harassment

- General protections
 - Act in good faith
 - Acting on expert evidence or professional advice
 - Act for a proper purpose (no personal interest)
 - Be informed
- Business Judgment Rule. Must however involve director action and does not apply if abdicate functions or failed to act.

- 1 Appointment of board members – right staff
- 2 Education – training in relation to duties, be aware of potential defences
- 3 Review of procedures – procedures documented and followed

1

Appropriate and sufficient insurance – understanding by Insured of policy and ensuring no gaps in program

2

Defence costs – Limit of indemnity. Potential for erosion of limit by defence costs

3

Managing risks to reputation – entitlement to crisis cover and importance of such cover for reputational reasons. Importance of loss mitigation cover.

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RISK MANAGEMENT FOR NFP BOARDS

Questions?

Panel

- ❑ Toby Barrie (Partner, DLA Piper)
- ❑ Richard Wyatt (Chief Underwriting Officer, Ansvar Insurance)
- ❑ Phil Gare (Chief Operations Officer, Ansvar Insurance)
- ❑ Kerry Thom (Financial Lines Portfolio Manager, Ansvar Insurance)



Management Liability Policy

Product Features and Benefits

Key Benefits

- 8 separate Insuring Clauses
- Market leading capacity up to \$25m Limit Of Liability any one claim and \$50m Aggregate Limit of Liability.
- Each Insuring Clause has its own Limit of Liability and an Aggregate Limit of Liability subject to the overall Aggregate Policy Limit
- Large number of automatic extensions offering a wide range of protection
- Capacity to provide unlimited retroactive cover

Policy structure

Insuring Clauses

- ***Entity Liability*** - covers the company where there is a claim against the entity alleging wrongful acts
- ***Directors & Officers Liability*** - covers claims alleging wrongful acts
- ***Entity Reimbursement*** - covers the D&Os where the company can reimburse them
- ***Employment Practices Liability*** - covers the company for claims alleging an employment practice breaches including wrongful dismissal, discrimination, harassment, deprivation of career opportunity, breach of contract etc

Policy structure

Insuring Clauses (cont)

- ***Trustees Liability*** - provides cover for trustees for claims alleging trustee responsibility breaches
- ***Statutory Liability*** - provides cover for statutory fines/penalties payable to any regulatory authority, includes any associated defence costs.
- ***Internet Liability*** - cover against liabilities attaching to the insured from its internet activities
- ***Entity Crisis Cover*** - Covers fees, costs and expenses of a crisis management consultant as a result of a crisis which first occurs during the period of insurance

Automatic Extensions

OLD	NEW	
Advancement of defence costs	Advancement of defence costs	
Attendance at official investigations or inquiries	Attendance at official investigations or inquiries	
Continuity of cover	Continuity of cover	
Criminal defence costs	Court attendance costs	<i>new</i>
Dishonesty of Others	Deprivation of assets expenses	<i>new</i>
Estates & Legal Representatives	Dishonesty of Others	
Extended Claim and Reporting Period	Estates & Legal Representatives	
Insured versus Insured cover	Extended Claim and Reporting Period	
Joint Venture Cover	Insured versus Insured cover	
Loss Mitigation	Joint Venture Cover	
Occupational Health & Safety	Occupational Health & Safety	
Directorships (non-profit organisations)	Directorships (non-profit organisations)	
Personal Injury Cover for Trustees	Pollution Defence Costs	
Pollution Defence Cost	Preservation of Indemnity	
Preservation of Indemnity	Retirement Cover for Insured Persons	
Retirement Cover for Insured Persons	Runoff cover for subsidiary organisations	<i>new</i>
Spousal Liability Cover	Runoff cover for outside directorships	<i>new</i>
Optional Extensions	Spousal Liability Cover	
Current outside Directorships (Including NFP Organisations)	Waiver of Excess	<i>new</i>
Run-off after Merger or Consolidation	Reinstatement in the event of a Recovery	<i>new</i>

Automatic Extensions (cont)

NEW	
<i>Automatic extensions</i>	
Emergency defence costs	<i>new</i>
Civil or bail bond expenses	<i>new</i>
Third Party Discrimination and Sexual Harassment	<i>new</i>
Current outside Directorships Including Non-profit Organisations	<i>new, previously an optional extension</i>
Mitigation costs	<i>previously loss mitigation</i>
Run-off after Merger or Consolidation	<i>new, previously an optional extension</i>
Personal Injury Cover for Trustees	
Employee Fidelity	<i>new</i>
Third Party Fidelity	<i>new</i>
Fidelity Investigation Expenses	<i>new</i>
Data Reproduction Expenses	<i>new</i>
Identity Fraud Expenses	<i>new</i>
Public Relations Expenses	<i>new</i>
Excess Limit of Liability for Insured Person	<i>new</i>
Tax Audit	<i>new</i>
Free Legal Consultation	<i>new</i>

Questions



Forum close

Please join us in the foyer for lunch

1300 650 540 [ansvar.com.au](https://www.ansvar.com.au)

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