



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

Ken Horsley, Partner, Minter Ellison

3. Q&A Panel

Ken Horsley, Minter Ellison

Richard Wyatt, Phil Gare and Kerry Thom, Ansvar Insurance

4. CEP Grant Recipient

Jim Hungerford, The Shepherd Centre



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

Always on

ANSVAR AUSTRALIA



ansvar[®]
insurance

Ansvar Insurance

Specialist risk and insurance provider to 5 core sectors

Care



Community



Faith



Education

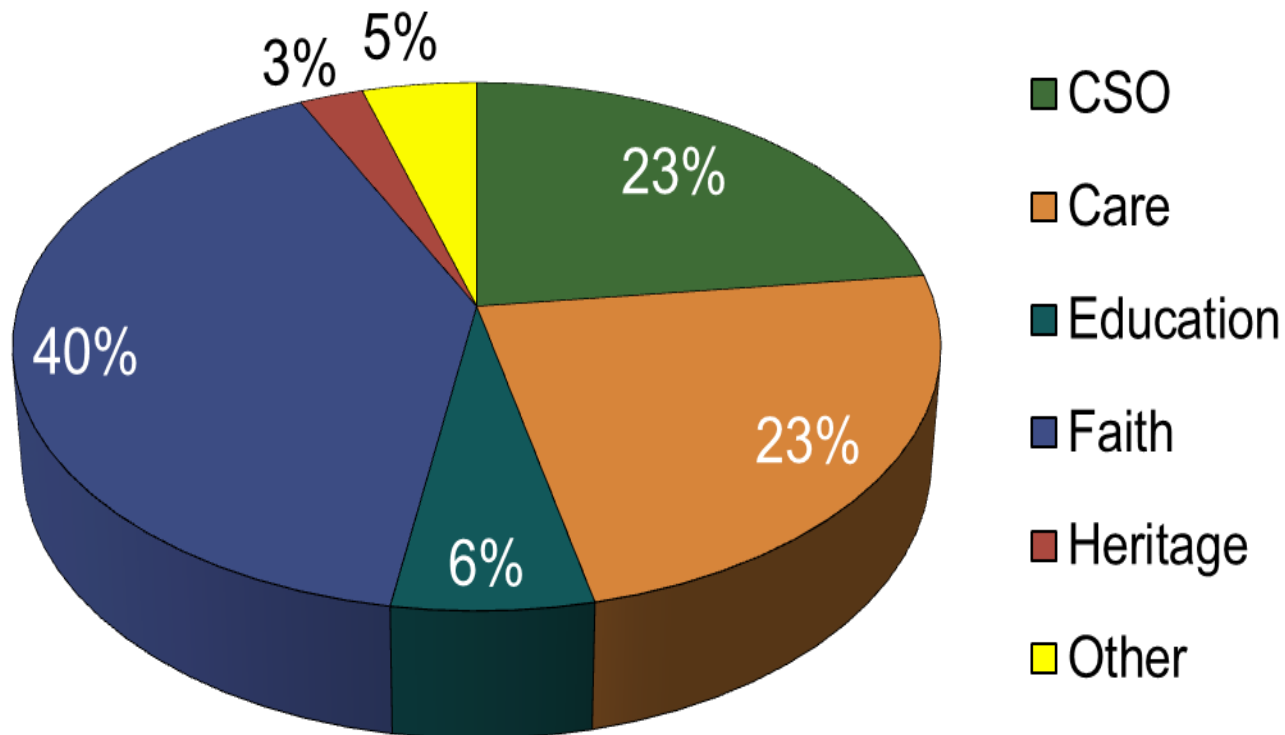


Heritage



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



The Shepherd Centre

Giving deaf children a voice



EVERYDAY

CareSouth



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

Ken Horsley

Partner, Minter Ellison



MinterEllison

Risks and responsibilities of not-for-profit boards



Ken Horsley
Partner, Minter Ellison

21 May 2015



Agenda

- What you need to know
 - **Know your entity** – the legal structure of your organisation matters
 - **Know your duties** – who holds the duties are what are they?
 - **Know your exposure** – what is the liability exposure and what are the consequences of a breach?
- Current trends



Know your entity

The not for profit sector

- Approximately 600,000 NFPs in Australia.
- About 58,000 have an active tax role and are economically significant.
- Contributed \$43B (4.1%) to Australia's GDP in 2007.
- Over 4.6M Australians volunteered with NFP in 2007.

Know your entity

Possible structures for NFP organisations

- Unincorporated association
- Incorporated association
- Company limited by guarantee
- Various trust structures
- Organisations formed by Royal Charter or Special Act of Parliament



A few myths ...

- “Our NFP is incorporated, so there’s no individual liability for directors”
- “Our NFP is an unincorporated association, so there’s no entity that can be sued”
- “Our Board are all volunteers, so there’s no possibility of individual liability”



Know your duties

Know your duties – sources of duties

NFP companies limited by guarantee

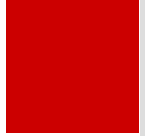
- General law
- *Corporations Act 2001*
- Activity-specific legislation – e.g. *Work Health and Safety Act 2011* and *Fair Work Act 2009*

Incorporated NFP associations

- General law
- *Associations Incorporation Act*
- Activity-specific legislation

Unincorporated NFP associations

- General law



Know your duties – general law duties

- Duty to act in good faith in the interest of the company as a whole
- Duty not to act for an improper purpose
- Duty to act with care and diligence
- Duty to retain discretion
- Duty to avoid conflicts of interest
- Duty not to disclose confidential information
- Duty not to abuse corporate opportunities



Know your duties – duties under the *Corporations Act*

- Duty of care, skill and diligence (**s 180**)
- Duty of good faith (**s 181**)
- Duty not to make improper use of position (**s 182**)
- Duty not to make improper use of information (**s 183**)
- Duty to disclose material personal interests (**s 191**)
- Duty not to trade while insolvent (**s 588G**)
- **Relevance to your insurance policy?**
 - NFP corporations need to talk to their brokers about D&O cover

Know your duties – duties under each state's *Associations Incorporation Act*

Duty	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Company
Care and diligence	No	No	No	No	Yes	No	Yes	No	Yes
Good faith	No	No	No	No	No	No	Yes	No	Yes
Proper use of position	No	No	Yes	No	Yes	No	Yes	No	Yes
Proper use of information	No	No	Yes	No	Yes	No	Yes	No	Yes
Disclose material interests	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Prevent insolvent trading	No	Yes	No	No	Yes	No	No	No	Yes

- **Relevance to your insurance policy?**
 - Incorporated NFP associations need to talk to their brokers about D&O cover



Incorporated Associations

- NSW and Queensland previously required compulsory public liability insurance.
- No longer required but in Queensland must be considered by the committee and must be acquired if the association occupies land.

Know your duties – legislative-specific duties

- **Occupational Health and Safety duties**

- Governed by the *Work Health and Safety Act 2011*:
 - **Section 27**: “If a person conducting a business or undertaking has a duty or obligation under the Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.”
 - *WorkCover Authority (NSW) (Inspector Maddaford) v Coleman* [2004] NSWIRComm 317

- **Relevance to your insurance policy?**

- Workers’ compensation insurance, D&O policies, management liability policy, potential WHSQ investigations

Know your duties – legislative-specific duties

- **Employment and other workplace duties**

- Governed by the *Fair Work Act 2009*
- Workplace bullying – Brodie Panlock
- Sexual harassment – *Richardson v Oracle Corporation Australia Pty Ltd*
- Unlawful dismissal - *Heugh v Central Petroleum Limited*

- **Relevance to your insurance policy?**

- NFPs should talk to their brokers about obtaining EPL or management liability to respond to discrimination, adverse action, unfair dismissal, sexual harassment, bullying claims and the defence costs component of wages claims

Discrimination and Equal Opportunity

- *Fair Work Act 2009 (Cth)*
- *Anti-Discrimination Act 1991 (Qld)*
- *Racial Discrimination Act 1975 (Cth)*
- *Sex Discrimination Act 1984 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Australian Human Rights Commission Act 1986 (Cth)*



Know your exposure

Know your exposure – relevant penalties and liabilities

Penalties under the *Corporations Act 2001*

- Breaching duties is a criminal offence (**s 184**)
- Civil penalties (**s 1317G**)
- Disqualification from management position (**s 206C**)
- *Prime Retirement and Aged Care Property Trust*

Know your exposure – relevant penalties and liabilities

Civil liability

- *Commonwealth Bank v Friedrich* (1991) 5 ACSR 115
 - Director ordered to personally pay \$97 million to Commonwealth Bank pursuant to the precursor of s.588G.

Know your exposure – relevant penalties and liabilities

Discrimination ?

- *Christian Youth Camps Limited v Cobaw Community Health Service Ltd*



Current trends

Current trends

Types of claims

- Personal injuries claims
- Discrimination complaints
- WHSQ investigations
- Sexual harassment
- Unfair dismissal complaints



Current trends

General trends

- Increasing regulation of charities
- Increased interest in NFP accountability
- Increased costs of defending claims
- High risk of unfavourable publicity



Royal Commission into historical abuse

- Ongoing
- Outcome still uncertain, but realistic prospects of:
 - Modification of statute of limitations
 - Changes to principles of vicarious liability

Contact details



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RISK MANAGEMENT FOR NFP BOARDS

Questions?

Panel

- ❑ Ken Horsley (Partner, Minter Ellison)
- ❑ 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
- Suitable for all organisations in our core segments and no limit on the organisation's turnover.

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 breach including wrongful dismissal, discrimination, harassment, deprivation of career opportunity, breach of contract etc

Insuring Clauses - *cont'd*

- ***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

Overview of Automatic Extensions

- 20 new automatic extensions in addition to the current suite
- Previous optional extensions have now been included automatically
 - ✓ *Current outside Directorships Including Non-profit Organisations*
 - ✓ *Run-off after Merger or Consolidation*

Automatic extensions – Key highlights

Employee Fidelity	<ul style="list-style-type: none">• <i>Indemnity for the Company for liability for any direct financial loss resulting from an employee committing a dishonest act against the insured.</i>• <i>Standard sublimit of \$50k for Employee Fidelity & Third Party Fidelity</i>• <i>Higher sub limit available up to \$500k in the aggregate, subject to additional premium charge.</i>
Third Party Fidelity	<ul style="list-style-type: none">• <i>Indemnity for the Company for liability for any direct financial loss resulting from a third party committing a dishonest act against the insured.</i>• <i>Standard sublimit of \$50k for Employee Fidelity & Third Party Fidelity</i>• <i>Higher sub limit available up to \$500k in the aggregate, subject to additional premium charge.</i>
Fidelity Investigation Expenses	<ul style="list-style-type: none">• <i>Ansvar will pay any reasonable expenses incurred by the insured to establish the existence and amount of the direct financial loss.</i>• <i>Sub-limited to \$25,000 in the aggregate.</i>• <i>No excess shall apply.</i>

Automatic extensions – Key highlights

Data Reproduction Expenses	<ul style="list-style-type: none">• <i>Covers reasonable expenses incurred to reproduce or duplicate damaged or destroyed electronic data or computer programs from any direct financial loss covered by Employee Fidelity and Third Party Fidelity.</i>• <i>Sub-limited to \$25,000 in the aggregate.</i>• <i>No excess shall apply.</i>
Identity Fraud Expenses	<ul style="list-style-type: none">• <i>Covers reasonable identity fraud expenses incurred if any party other than the insured enters into any agreement with any third party fraudulently representing themselves as the insured.</i>• <i>Sub-limited to \$25,000 in the aggregate.</i>• <i>No excess shall apply.</i>
Public Relations Expenses	<ul style="list-style-type: none">• <i>Covers reasonable costs of a public relations firm engaged for the purposes of preventing or limiting potential adverse or negative publicity in respect of a covered claim or official investigation.</i>• <i>Sub-limited to \$100,000 in the aggregate.</i>• <i>No excess shall apply.</i>

Automatic extensions – Key highlights

<i>Excess Limit of Liability for Insured Person</i>	<ul style="list-style-type: none">• <i>Provides excess cover in addition to D&O limit of liability</i>• <i>Maximum of \$1,000,000 in the aggregate for each insured person subject to the aggregate policy limit</i>
<i>Tax Audit</i>	<ul style="list-style-type: none">• <i>For refund of professional fees incurred following completion of, or in connection with, a tax audit.</i>• <i>Standard sublimit of \$20k in the aggregate</i>• <i>Higher sub limits available up to \$500k subject to additional premium charge.</i>
<i>Free Legal Consultation</i>	<ul style="list-style-type: none">• <i>Up to two hours free legal advice from firm appointed by us on matters relating to the insured's professional business.</i>• <i>Legal advice will be of a general nature and not relating to indemnity issues on any insurance policies issued by us.</i>

Questions



Forum close

Please join us in the foyer for lunch

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