



Understanding Lease & Hire Agreements

A Guide for Sport & Active Recreation Clubs

A VicSport Publication

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TABLE OF CONTENTS

LEASE, LICENCE AND HIRE AGREEMENTS 5

- Lease Agreements..... 5**
- Licence 7**
- Hire Agreements 7**
- Seasonal Allocations 8**
- Crown Land..... 8**

UNDERSTANDING THE TERMS AND CONDITIONS OF AGREEMENTS..... 10

- Negligence Based Liability 10**
- Indemnity Clauses 12**
 - Joint Names 12*
 - Hold Harmless Clause..... 14*
 - Principals Indemnity 15*
 - Interested Party Clause..... 16*
 - Cross Liability Clause..... 19*
 - Waiver of Subrogation..... 20*

YOUR RIGHTS & RESPONSIBILITIES AS A LESSEE 21

- Occupier’s liability - Responsibility to hold insurance cover..... 21**
- Right to access safe and appropriately maintained facilities..... 22**
- Responsibility to maintain facilities..... 22**
- Responsibility to manage and limit risks 23**
- Responsibility to abide by local laws 24**

RESPONSIBILITY TO COMPLY WITH LEGAL OBLIGATIONS 25

- Incorporation 25**
- Liquor Licensing..... 26**
 - Underage requirements and prohibitions 27*
 - Liquor licence applications 27*
 - Responsible Service of Alcohol..... 27*
- Gaming & Gambling 28**
- Food Safety 28**

Occupational Health & Safety	29
WorkCover	29
Emergency Procedures	30
Responsibility for Provision of Evidence	30
INSURANCE	31
Public Liability Insurance	31
Professional Indemnity Insurance	32
Directors & Officers Liability Insurance	32
Association Liability Insurance	33
Personal Accident & Injury Insurance	33
Sports Participation Risk Exclusions	33
Volunteer Workers' Personal Accident Insurance	34
Protection of Property	34
Insurance Brokers and Agents	34
Claims Made VS Occurrence based policies	35
Offshore Policies	37
Responsibility to Disclose Information	37
GLOSSARY OF TERMS	39
APPENDICES	46
Appendix 1: Example Facility Access Agreement	47
Appendix 2: Example Maintenance Responsibilities Schedule	60
Appendix 3: Example Match Day & Training Session Checklist	62
Appendix 4: Example Sports Ground Inspection Form	65

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FOREWORD

VicSport, with funding support from the Victorian Property Fund on the Approval of the Minister for Consumer Affairs, has developed this resource to specifically assist community sport and active recreation groups better understand lease, hire and licence agreements, and to help clarify their responsibilities as a leasing organisation.

Lease and hire agreements define the terms and conditions under which the lessor/owner/ landlord agrees to allow the lessee/user/tenant to access and use specified facilities. Signed agreements form a legally binding contract under law and organisations will be expected to meet all the terms and conditions of any agreement they sign, regardless of whether or not the implications were fully understood.

Organisations can get caught out by not taking the necessary steps to ensure they fully understand all the terms and conditions of their access agreements. Often they only become aware of a problem when an unexpected claim is made - at which time it's too late.

Sport and active recreation organisations, even small volunteer run community organisations, must take responsibility for ensuring they fully understand exactly what every clause and term in an agreement means for their organisation. If at any time there are any queries over the terms and conditions contained within an agreement, it is vitally important appropriate professional advice is sought.

We hope this resource will both help sport and active recreation groups better understand their existing lease and hire agreements, and to work together with councils to develop more appropriate agreements for the future.

Yours in sport



Kate Roffey - CEO

LEASE, LICENCE AND HIRE AGREEMENTS

Facility access agreements, particularly those covering ongoing access for an extended period of time, are usually presented to a sporting group in the form of a [lease](#) or [licence](#). In addition, groups may also [hire](#) facilities from councils for short-term or ad hoc access.

Essentially, a facility access agreement, be it in the form of a lease, licence or hire agreement, outlines the general responsibilities of the [lessor](#) (or owner/landlord) and the [lessee](#) (or tenant/hirer).

While we tend to use the terms 'lease', 'licence' and 'hire' interchangeably to indicate any access agreement, there are some significant legal differences between these types of agreements lessees should be aware of. As these agreements are [legally binding](#) both the lessor and lessee are expected to adhere to their specific terms and conditions under law.

Lease Agreements

A [lease](#) is a right granted by the owner of land for an occupant to have the exclusive use of that land for a specified period of time in exchange for an agreed rental payment.

In the sporting context, lease agreements are usually used where the site is either fully occupied for a specific purpose, for example bowling greens, tennis courts, synthetic hockey pitches; or where a club has made substantial contributions to the development of the site.

From a legal perspective, a lease agreement [creates an interest](#) in the land and/or facility. Technically this means the lease agreement is both binding on third parties, and, unless the lease specifies to the contrary, is capable of being assigned.

Binding on third parties means if the lessor sells the land and/or facility during the period when the lease is still current, the purchaser will take the land and/or facility subject to the lease.

Capable of being **assigned** means the lessee may convey all rights under the lease to a third party (the assignee) for the remainder of the lease term. When a lease is assigned the new assignee assumes a contractual relationship with the original lessor.

Note: An assignment differs from a sub-lease. Under a sublease, whilst the original lessee gives the rights of the lease temporarily to a third party, the third party does not assume a contractual relationship with the lessor. The original lessee retains the same rights and obligations under the lease, and forms a second contractual relationship with the sublessee. Under assignment all rights and obligations are transferred to the new lessee.

If a lease agreement grants to the lessee exclusive occupancy over the land or facility it follows the maintenance and management expectations placed on the lessee will usually be much greater than they are under licence or hire agreements. As such the terms and conditions of a lease agreement will generally be extensive.

If your sport or active recreation organisation currently holds, or is considering taking on a lease agreement, you should be fully aware of the legal implications of these types of agreements, and your contractual obligations as a lessee. Prior to signing a lease agreement your organisation must be confident it can meet all the obligations and requirements outlined in the agreement.

Note: Limit to Lease Agreements - In Victoria, Councils are prohibited under the Local Government Act 1989 (Vic) from entering into lease agreements exceeding 50 years.

Licence

Under the terms and conditions of a [licence](#) contract, the licensee is granted permission to access property for a specified purpose(s), such as conduct of a sporting activity, at specified times, and under specified conditions. Licences rather than lease agreements are usually used in cases where the facility or premises are shared by a number of user groups.

As a licence agreement does not provide for exclusive use of a facility beyond the specified times of access no 'interest' in the land is created. It is therefore reasonable to expect the rights and obligations of the lessee in respect to maintenance and management requirements of the facility will be less stringent under a licence agreement than would be expected under a lease agreement.

In addition, as no interest is created under a licence agreement, a licence cannot be assigned without agreement from the licensee. Similarly, a licence agreement terminates should the licensee cease to own the land.

Hire Agreements

[Hire](#) agreements are usually used for short-term or irregular one-off uses of a facility. In the case of hire agreements, the guidelines for use of a facility will be dependent on the hirer accepting the owner/hirers specific terms and conditions of hire of facilities. In cases where council is the owner/hirer, it should be noted that the terms and conditions of hire will generally vary from council to council so individual agreements should be read carefully.

Similar to licence agreements, hire agreements do not create any interest in the facility and any responsibility either party has to the other in regard to use of the facility ends when the agreed hire period expires.

Note on hire agreements

Insurance responsibilities under hire - As with all access agreements the hirer will usually be required to hold all insurance necessary to indemnify the council against actions, claims and demands of any kind for which the hirer, (and the persons under their control or responsibility) are responsible, in connection with the usage of the facilities and with the conditions for hire of facilities.

Some Victorian council's actually provide insurance cover for small community groups wishing to use facilities to help facilitate access. This is however not standard practice and groups wishing to hire facilities should verify insurance requirements.

Seasonal Allocations

For some sporting clubs, access to land is granted on a [seasonal allocation](#) where occupancy is granted for the portion of the year relating to defined seasonal dates.

In cases where seasonal allocations are commonly used, council's may have a specific seasonal allocation policy outlining the terms and conditions of occupation which the user will be expected to agree to and comply with. In general however, these terms and conditions should be similar to those contained in a standard lease agreement.

Crown Land

[Crown land](#) is public land managed and held in trust by the Government for the benefit of the Victorian community. Crown land can be leased or hired if the purpose for which it is to be used 'benefits the community through improved social and economic outcomes and is not detrimental to the land itself'.

Most Crown land used by sport and active recreation groups is [reserved Crown land](#). This is land formally reserved for a particular purpose, such as recreation reserves, public parklands and community halls. Reserved Crown land is usually managed on behalf of the Department of Sustainability and Environment (DSE) by another land manager, such as a committee of management appointed by the Minister for Planning.

If your organisation is interested in leasing or hiring Crown land, you will be required to make application either directly to DSE, or to the delegated body responsible for management of that land. Terms and conditions of Crown land agreements are usually prepared in accordance with DSE guidelines and lease and hire agreements take the form of those provided by the Department rather than the standard council agreement.

Note to Crown land agreements

- 1. Ultimately all Crown land agreements are provided to the Minister or Minister's delegate for in principle approval prior to completing final lease negotiations with the land manager.*
- 2. Leases over reserved Crown land granted under the Crown Land (Reserves) Act 1978, are subject to a 21 year maximum time period.*

UNDERSTANDING THE TERMS AND CONDITIONS OF AGREEMENTS

Lease, licence and hire agreements are legally binding contracts. Upon signing such an agreement you will be expected under law, to meet all obligations and requirements outlined in such an agreement. It is therefore vitally important you fully understand the implications of all terms and conditions contained in your agreement prior to signing.

In essence, through lease and hire agreements the council aims to define the conditions for use of the facility, and to limit their exposure to negligence-based liability. In an effort to clearly delineate responsibilities lease and hire agreements have become unnecessarily complex and in many cases contain a range of inappropriate clauses, in particular those relating to [negligence-based liability](#), that potentially create pitfalls for the unwary lessee.

Negligence Based Liability

Sport and active recreation pursuits, due to their physically active nature, inherently carry some risks, and councils are wary of expanding their exposure to liability as a result of providing sporting facilities. Quite rightly, council's do not want to be held liable for incidents arising through the negligence of the lessee.

Through the terms and conditions of facility access agreements councils aim to separate out those risks that arise intrinsically from the facility (and for which councils should rightly accept responsibility), from those arising as a result of the particular sport or recreation activity being undertaken.

It is entirely appropriate for council's to require that lessees have suitable and adequate insurance policies to cover an incident arising from any negligence on the part of the lessee, and to require evidence of such cover before gaining access to council facilities. It is not however appropriate for a council as a lessor to expect the lessee to provide indemnity cover for incidents arising from either the negligence of the council itself, or from an act of another party over which the lessee has no control.

Historically, indemnity clauses included in agreements, like joint names and principals indemnity requirements, were taken from commercial contracts. These requirements, whilst they may be relevant for commercial-based contracts, are not appropriate for community-based lease and hire agreements. In the past, inclusion of these terms and conditions has largely gone unnoticed as counter-claims against these clauses were rarely made. With the recent tightening of the insurance market and increased litigation however, instances of such clauses being claimed against has alerted groups to their potential danger, and has highlighted the need for development of more appropriate agreements.

An insurer expects to respond to the negligence of its insured client, but not to the negligence of third parties. The expectation is the facility owner will be responsible for organising their own insurance to cover their own negligence. The danger with joint names, principal indemnity, and to a lesser extent poorly worded interested party clauses, is they extend cover to the council as the lessor. This means the sport organisation can be required to pay costs for an incident for which they, under a test or reasonableness, would not be considered liable.

Both lessees and lessors have a right to insist they cover only those claims or the portion of a claim, which is rightly attributable to the negligence of a person or persons associated with their organisation and/or their use of the facility.

Insisting either group takes on liability for the actions of others is unfair and inequitable and both the [Municipal Association of Victoria](#) and [Civic Mutual Plus](#) have recommended Victorian LGA's do not include in access agreements indemnity provisions that pass on unfair levels of responsibility to the user. Instead CMP recommend both parties should have appropriate public liability insurance to provide cover any costs to the full extent of the Common Law, which may arise as the result of a negligent act. CMP recommend that Common Law prevail, in which case whosoever is negligent would be responsible for costs arising, and if more than one person(s) or group(s) contributed, each shall be liable to the extent they contributed.

The following section defines some of the key [indemnity](#) clauses, such as joint names, principal indemnity, hold harmless and interested party clauses of which sport and active recreation organisations, as lessees of facilities, should pay particular attention to.

Indemnity Clauses

Joint Names

A [joint names](#) clause, when included in an insurance policy, requires that the sporting group's insurance policy also provides liability cover for the jointly named party, in this case the council. In the event of the council as lessor being sued for costs, they can claim reimbursement for these costs against the lessee's insurance policy under the joint named clause. From the lessee's perspective, the danger with a joint named policy is that it potentially gives the lessor the right to claim against the lessee's insurance policy, even in cases where liability was not due to the fault of the lessee.

Following is an example of a joint names clause contained in a standard lease agreement distributed by one Victorian LGA:

Example 1: Joint Names Clause

*The club must take out a Public Liability Policy for a minimum of \$10 million in **joint names** of Council and the Club. The insurance must have a cross liability clause and a waiver of subrogation clause. A [certificate of currency](#) must be provided to council prior to the commencement of the use of the Reserve and the signing of the Agreement.*

Given a joint names clause requires that the insurer agrees to act for both the sporting group and the council to the limit of the sum insured regardless of who is at fault, it is not surprising to find in the current insurance market it is virtually impossible for sport and recreation organisations to purchase a joint names insurance agreements. Even if such

cover could be sourced, it is likely the cost would be so great it would prohibit all but the most affluent sports from being able to afford it.

VicSport along with a number of other sport representative groups, have argued any requirement by councils for users to have a joint named insurance policy is both an unfair and unrealistic expectation. Civic Mutual Plus has recommended to councils they delete any requirement for joint named insurance policies from sport and recreation facility access agreements. If your organisation is presented with an agreement containing a joint naming requirement you should draw attention to CMP's recommendation.

Appropriate Indemnity Clause

In place of a joint names requirement it is recommended both the lessee and lessor hold appropriate public liability insurance to cover any claims, or portions of claims, caused through fault on their own part. Such an agreement requires the lessee to indemnify the council for any acts arising through their own negligence or the negligence of an associated party, without accepting undue responsibility for negligent acts by unassociated others.

Following is an example of a fair and equitable indemnity requirement:

Example 2: Appropriate Indemnity Clause

The lessee agrees to provide cover to the council under their own public liability policy indemnifying the council as principal from all actions, costs, claims, charges, expenses, penalties etc arising from the lessees activities, but only to the extent the damage is caused by or attributable to the fault of the lessee or associated person(s).

If a joint naming requirement is essential, you must be certain your insuring agency is both aware of the requirement, and agrees to insure the lessor under a joint named

agreement. If you fail to gain agreement from your insurer to provide such cover chances are your organisation will find itself uninsured and fully liable should a relevant claim against the joint names clause be made.

Note on Joint Names policies

In some cases, such as insuring multiple sport groups using a facility, an insurer may be willing to issue a joint names agreement. In this case the policy agrees to insure all users listed on the policy, as opposed to insuring both the sporting group as the user and the council as the owner.

Hold Harmless Clause

The [hold harmless](#) clause requires that the lessee 'release' the lessor from any liability arising out of the use of the facility. In effect, the sporting organisation is agreeing to release the council from their obligation to provide liability cover for any actions, claims or damages brought against the council in relation to the use of the facility, regardless of who is at fault.

In the sporting context, a lessee who agrees to 'hold the lessor harmless' would not be able to sue the lessor if, for example, a participant involved in an activity allowed under the terms of the access agreement was injured due to the lessor's failure to appropriately maintain the premises. Via the hold harmless clause the lessee has agreed to release the lessor from a liability for which the lessor would otherwise be legally liable.

As the implications for hold harmless clauses can have detrimental consequences for the lessee, it is recommended sporting groups ask council to remove any hold harmless requirements from access agreements. This recommendation is supported by CMP who have encouraged councils not to ask for hold harmless provisions but rather to ensure lessees have adequate insurance to cover any costs attributable to negligence on the part of the lessee and their associated persons or activities.

In a compromise effort, some access agreements have removed a generic hold harmless requirement, and instead include wording to the effect that the lessee agree to hold harmless the council against all actions, costs etc., arising out of the use of the council facility, 'except in cases where the council has been negligent'.

While this goes part way to removing the need for the lessee to indemnify the council for costs if the council itself is found negligent, such a clause still means the lessee can be found liable for an incident which occurred through no fault of their own, such as unassociated vandal damage.

If council as the lessor does insist on a hold harmless provision, the lessee should ensure it is worded to release the council only in cases where negligence on the part of the lessee is proven. As always the lessee must seek specific agreement from their insurer to cover this hold harmless provision under their insurance policy.

See page 14 for an [example of a fair and equitable indemnity requirement.](#)

Principals Indemnity

A [principals indemnity](#) clause requires the sporting organisation/club's insurance policy to extend their indemnity cover to the principal, in this case the council as lessor. Similar to a hold harmless provision, the danger is a poorly worded principals indemnity clause may mean the lessee finds themselves liable for costs arising which should by rights be attributed to another at fault party.

Consider the following wordings:

- A. The lessee indemnifies and keeps indemnified the Principal (in this case the lessor) against claims for damage or injury caused or contributed to by the lessee.
- B. The lessee indemnifies and keeps indemnified the Principal (in this case the lessor) against claims for damage or injury caused or contributed to by the lessee, but only to the extent the damage is caused by or attributable to the fault of the lessee.

In the case of wording A, the words ‘contributed to’ place the lessee in a position where they could be required to fully indemnify the principal if they contributed in any way to the damage or injury, even if their contribution to the loss in relative terms was small.

In contrast, under wording B, the lessee’s liability is limited to the extent only to which they are at fault. In this case if the lessee was partly, but not fully at fault, they are liable only to the degree to which their negligence contributed to the damage or injury.

Important variations in wording can create traps for the unwary if time is not taken to fully understand the requirements of the terms and conditions of agreements. While it is preferable principal indemnity clauses do not appear in facility access agreements at all, if council as the leasing body does insist on such a clause, it is important sporting groups as lessees agree to indemnify the council:

- Only where the council as the lessor is drawn into a claim
- Only where the sporting organisation as the lessee has been negligent, and
- Only to the extent the damage is attributable to the lessee.

See page 14 for an [example of a fair and equitable indemnity requirement](#).

Interested Party Clause

Recently, while council’s have moved away from insisting lessees provide joint names, hold harmless or principal indemnity cover for the council under their insurance policies, the requirement for the council to be named as an [interested party](#) is becoming more evident.

Unlike joint name and principle indemnity clauses, insurers will usually acknowledge the right of a lessor to be named as an interested party and this type of cover can be included in policies, providing the wording of the clause is appropriate. Similar to principals indemnity, it is important any interested party clause agrees to indemnify the council only in cases where the council is drawn into a claim where the damage caused

was due to negligence on the part of the lessee, and only to the extent the damage is attributable to the fault of the lessee.

Outlined below is an overview of a recent legal case, which clearly demonstrates the danger of signing an agreement containing an ill-defined interested party clause.

NSW Arabian Horse Association v Olympic Co-Ordination Authority [2005] NSWCA 210

In 2001, the NSW Arabian Horse Association (the ‘Association’) signed an agreement with the Olympic Co-Ordination Authority (the Authority) to use the Sydney International Equestrian Centre for the staging of an event. The terms and conditions outlined in the facility use agreement included requirements for the user to provide public liability insurance for no less than ten million dollars, and to name the Authority on this policy as an interested party.

The Agreement also included a provision whereby the Association indemnified and released the Authority from all liability, except to the extent such liability was due to the negligence of the Authority.

During the period when the user agreement was in place, a couple were injured after they fell into a culvert en-route to the car park after the event. The Authority initially settled personal injury claims of approximately \$100,000 for the couple. The Authority then cross-claimed against the Association under the interested party terms stipulated in the signed agreement.

Common Law

Disagreement between the parties regarding who should be held liable saw this case end up in the court system. Where the Association argued they should not be held responsible as the incident in the car park was not due to any negligence on their part, the Authority argued their being named as an interested party meant the Association’s insurance policy should have extended cover to the Authority.

At the initial hearing the Judge found for the Authority and awarded damages in favour of the Authority. The Association appealed this decision arguing the accident was not due to any negligent act on their part. The Court of Appeal overturned the appeal on the basis the agreement specified the Association must have at least \$10 million Public Liability insurance, and name the Authority as an interested party.

While the Judge agreed what was meant by the Authority being named as an interested party was not “expressed with any great precision”, his reading of the Insurance Contracts Act led him believe that requiring the Authority to be named in the policy as an interested party meant the policy should have extended cover to the named interested party, which in this case was the Authority.

As the contract signed by the Association was a legally binding document the Judge found the Association had breached the agreement in failing to take out public liability insurance covering the Authority. The court dismissed the appeal and the Authority recovered their costs from the Association.

The issue of importance here is that while it was agreed the accident was not due to the specific negligence of the lessee, it could not be proven the accident was due to specific negligence on the part of the lessor either. As the lessee had agreed to indemnify the lessor for liability **except in cases where the lessor was found negligent**, under the terms of the agreement the lessee was responsible for any liability arising.

It is vital organisations signing lease or hire agreements including an interested party clause understands the full breadth of their obligations under the wording of the clause. A poorly worded clause creates potential for the club to be held responsible for claims made which are caused through no negligence on the part of the club itself.

Following is an example of a poorly worded interested party clause found in one Victorian council’s lease agreement.

Example 3: Poorly Worded Interested Party Clause

Clubs must have Public Liability cover with Council noted as an interested party. The Club must be covered for a minimum of \$5 million against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against the Club arising out of, or in relation to allocation or use of a reserve or pavilion.

As with any liability clause it is important any interested party clause agrees to extend cover to the lessor:

- Only where the lessor is drawn into a claim
- Only where the lessee has been negligent, and
- Only to the extent the damage is attributable to the lessee.

If an interested party clause is included in an agreement, organisations must make certain their insurer agrees to provide cover as stipulated by the terms of the interested party clause under their insurance policy.

See page 14 for an [example of a fair and equitable indemnity requirement](#).

Cross Liability Clause

[Cross liability clauses](#) are commonly found in policies where more than one party is insured. In the sport and recreation context, cross liability clauses are often used in cases where the organisation as an entity, and individuals within the organisation, for example coaches, officials and players, are all insured under a single policy.

The cross liability clause extends the policy so the words ‘the insured’ are considered to apply to each party covered by the policy. In effect this allows one of the parties insured under the policy to take legal action against another party insured under the same policy, with cover still applicable to both.

For example, if a policy contains an appropriate cross-liability clause it will provide cover for both a player and a coach insured under the same policy if the player proves an injury was sustained through negligence of the coach.

Waiver of Subrogation

A [waiver of subrogation](#) endorsement issued by an insurer indicates the insurer ‘waives’ its right to make a claim against a third party. The waiver of subrogation clause is used to minimise lawsuits and claims amongst insured parties and most commonly appears as part of a policy where there are joint named parties.

As an example, consider the case of an agreement jointly naming both the lessor and the lessee. While the main intent of the lessee’s insurance policy is to insure the lessee for claims arising through their own negligent acts, the joint name clause means the lessee can also be considered legally liable for damages arising out of a negligent act of the lessor, even if the lessee was not at fault in any way. In such a case, the insurer would be required to cover the costs of a claim made, even if the lessee was not at fault. A waiver of subrogation clause acts to stop the insurer from making a counter claim against the lessor to recover costs for damages arising due to the negligence of the lessor and not the lessee.

YOUR RIGHTS & RESPONSIBILITIES AS A LESSEE

Both the lessor and lessee have certain rights and responsibilities in regard to lease and hire agreements. The lessor for example, has a responsibility to ensure leased facilities and venues are safe for use, whilst the lessee has a responsibility to hold adequate and appropriate insurance cover for liability exposure.

Neither the lessor nor the lessee however has the right to insist on unfair and inequitable agreements. Understanding your rights and responsibilities as a lessee is a key to ensuring your access agreement includes fair and equitable levels of responsibility. As community sport providers and users of community owned facilities, sport and active recreation organisations are well within their rights to question terms and conditions of agreements and request appropriate amendments.

Following is further information regarding rights and responsibilities of lessors and lessees.

Occupier's liability - Responsibility to hold insurance cover

From a legal viewpoint sporting groups using a facility under the terms of a facility access agreement would most likely fall within the broad category of 'facility occupier' under the law, even if access were only for relatively short periods. As the facility occupier and activity provider you effectively take responsibility for both the facility and for conduct of an activity. As the occupier you are considered to have assumed a 'duty of care' to users and the general public alike for the safe operation of the activity and the facility.

As a facility occupier providing activities, the lessee has a responsibility to hold appropriate insurance cover for any claim for injury that may arise from a breach of the duty of care that was owed by them, or any other negligent act on behalf of the lessee. All organisations must be sure their insurance policies agree to cover all clauses included in any agreement signed. Further information on types of insurance cover can be found in the ['Insurance'](#) section.

Of course there is always a 'grey area' where neither the lessor nor the lessee is at fault, for example damage cause via vandalism. As the following example shows, having clearly defined responsibilities included in the terms and conditions of access agreement helps in cases where clarification is required.

Example 4: Vandalism Responsibility Clause

Liability for damage to the ground/s, but excluding damage or loss of club property, caused by vandalism that occurs outside the hours when the club has been allocated use of the ground/s in accordance with the schedule, shall be the responsibility of the Council.

Right to access safe and appropriately maintained facilities

In general, under the terms of a facility access agreement, council, as the owner and lessor of the facility, has prime responsibility for ensuring the facility is fit for the purpose for which it has been agreed to be used, (in this case a sport or active recreation activity), and is free from structural deficiency.

Responsibility to maintain facilities

Under general lease requirements the tenant of any property has a basic responsibility for ensuring the rented property is kept in the condition and order in which it was presented. In the sport and recreation context, the 'facility' being leased is not usually just a single building or premise, but rather is an area which includes a range of facilities such as a pavilion or club house, courts or fields, car parks, fences, spectator seating and access pathways for example. Given there are no standardised guidelines clearly defining who has responsibility for maintaining each of these areas, it is important the maintenance responsibilities of the sporting group as the lessee are clearly defined in the access agreement.

Generally, maintenance requirements will vary depending on the type of lease or hire agreement entered into. It is reasonable to expect an organisation holding a seasonal or long-term lease will be required to take on greater responsibility for maintaining the facility than those groups who hire facilities on a short-term basis for example. Before signing an access agreement it is important the lessee fully understands their maintenance responsibilities and is satisfied these responsibilities are fair and equitable.

Responsibility to manage and limit risks

Risk is inherent in operating sporting facilities and running sport and active recreation activities. As the users of facilities and organisers of activities, it is the clubs themselves who are primarily responsible for managing risks associated with the running of their activities.

As a basic element of their duty of care responsibilities, all sport and active recreation organisations must ensure they have appropriate risk management processes in place to systematically identify, assess and treat potential risks associated with their activities. In today's litigious society, having an effective risk management plan in place is so important some insurers are willing to offer reduced insurance premiums to sporting groups who show they have taken steps to reduce the inherent risks associated with running their activities. In addition, it is becoming increasingly common for council's to require the lessee demonstrates they have an effective risk management plan in place prior to signing a lease or hire agreement.

Developing a comprehensive risk management plan can be a complex task, however the rewards in terms of safer facilities and activities, lower numbers of insurance claims and in turn lower insurance premiums does balance out the cost/benefit ratio. To assist sport and active recreation organisations in creating appropriate risk management plans VicSport has developed the Online Risk Identifier Tool. To find further information on using this application visit the Risk Identifier website at:

http://www.vicsport.asn.au/content.asp?contentID=253&topic_ID=633

Responsibility to abide by local laws

Local laws are a set of specified rules and regulations established, implemented and enforced by councils to protect local amenities, the environment and the general well-being of the community. Local laws aim to 'keep the peace' by prohibiting, regulating and controlling activities which are considered 'detrimental'. Local Laws affect the operation and management of sporting activities and facilities in a range of ways, such as:

- Regulating the use of Council facilities and reserves to ensure minimum standards of behaviour are adhered to
- Protecting facilities from interference or damage
- Ensuring activities do not create undue nuisance or disturbance
- Regulating car parking
- Setting controls over waste disposal and littering

If you are a user of council owned facilities it is important you are aware of any restrictions imposed or obligations you may be required to meet under local law requirements.

Note: Local laws can vary between councils so it is important to be aware of relevant local laws prior to signing any lease or hire agreement.

RESPONSIBILITY TO COMPLY WITH LEGAL OBLIGATIONS

As part of the terms and conditions of lease or hire council's may require that potential lessees provide evidence proving compliance with a range of specified legal and associated requirements. The following information includes some of the more common legal obligations lessors may be required to comply with.

Incorporation

As a general rule, in order to enter a facility access agreement a sporting group must have some form of legally recognised structure, for example being an incorporated association or a company limited by guarantee.

Having a legally recognised structure is important as it identifies the organisation as a legal entity in its own right separate from its members. Being a legal entity, such as an incorporated association for example, means the organisation can enter into contracts, own land and other property, sue and be sued, be held legally liability for debts (usually limited to its assets), and can continue to exist in its own right irrespective of changes at the board/committee, staff, or membership levels.

Conversely, an unincorporated organisation has no legal status separate from its members and is not recognised in the eyes of the law. Unincorporated clubs put members at risk of litigation, as it is the members, and not the organisation itself, which may be held liable for incidents arising.

Given the need for sport and active recreation groups as lessees to take responsibility for their own liable actions, lessors will normally require groups using facilities, in particular those on longer term lease and licence agreements, to at least be incorporated.

Further information regarding incorporation can be found on the Consumer and Business Affairs website at <http://www.consumer.vic.gov.au>

Liquor Licensing

Most council lease or hire agreements will require lessees to declare if they intend to sell liquor. The facility access agreement will usually specify that any organisation intending to sell or supply liquor on council owned or operated premises must provide evidence they hold an appropriate permit or licence prior to sale or supply. Sale and supply of liquor is regulated via the provisions of the Liquor Control Reform Act 1998. In general, the following licences are available for sporting clubs:

- **On-premises Licence** - authorises the sale of liquor for consumption on the licensed premises. To be eligible for an on-premises licence, the predominant activity must be the preparation and serving of meals for consumption on the premises.
- **Full club licence** - authorises the supply of liquor to club members, guests of members and authorised gaming visitors. A full club licence also allows the holder to sell liquor for off premises consumption to members.
- **Restricted club licence** – authorises the supply of liquor to a member or guest of a member for consumption on the licensed premises only (take-away's not permitted).
- **Limited Licence** - authorises the supply of liquor where the scale and scope of the supply is limited. A limited licence can allow for the supply of liquor from a point of sale during sporting events for drinking outside the licensed premises (for example, from a canteen or marquee), provided specific approval is first obtained.
- **Temporary limited licence** – authorises limited supply of liquor either for one-off events, such as a ball or presentation night, or to extend trading hours for a one-off event.
- **Renewable Limited Licence** – authorises limited supply of liquor for a specified series of events, for example home games, over the course of the season.
- **BYO Permit** - allows members to bring their own liquor and drink it on club premises.

Underage requirements and prohibitions

Clubs wishing to allow underage persons onto the premises for the purpose of participating in sporting activities or presentations who are not accompanied by a parent or guardian must request an underage approval when applying for a licence. Premises used primarily by persons under the age of 18, including premises primarily used by junior sporting clubs, cannot be licensed.

Liquor licence applications

Liquor licence applications must be made to Liquor Licensing Victoria.

For further information on liquor licencing visit the Consumer Affairs Victoria website: www.consumer.vic.gov.au. Fees apply for all licence applications.

Responsible Service of Alcohol

Any sporting club or organisation serving alcohol should do so in a responsible manner. There are specific responsible service of alcohol courses which provide information about alcohol and the law, problems associated with excessive consumption, facts about alcohol and its effect on the body, strategies for responsible serving, ways to prevent customers from becoming intoxicated and refusal of service. If your organisation serves alcohol it is recommended relevant staff attend a responsible service of alcohol course.

For further information regarding responsible management of alcohol in sport visit the Good Sports website: www.goodsports.com.au/

Gaming & Gambling

In Victoria there are rules and regulations governing fundraising activities, including raffles. The Gaming Act No. 2, 1997 regulates [minor gaming](#) activities of community organisations including sporting groups. Minor gaming activities include raffles, bingo, lucky envelopes and other fundraisers where money is raised through the playing of games which would be unlawful without a gaming licence. Under the Act, only sporting groups declared to be genuine 'community' groups may be issued with a permit for minor gaming activities.

A range of conditions must be followed for the conduct of minor gaming activities, for example specific permits are required for raffles where the total prize value exceeds \$5000. Councils may request proof of compliance with requirements if your club or organisation conducts minor gaming activities.

For further information regarding fundraising eligibility, activity guidelines and permit requirements go to the Community and Charitable Gaming section of the Victorian Commission for Gaming Regulation website: www.vcgr.vic.gov.au/

Note on Gaming Machines

If your use of a hired venue requires licence approval under the Gaming Machine Act (Vic), written consent of the council is usually required before applying for such a licence. The council may withhold its consent or give its consent subject to such terms and conditions as council may determine in its absolute discretion.

Food Safety

There are legal requirements governing the preparation and service of food. Under the Food Act 1984, all food businesses distributing or selling food must be registered with their local council in order to operate. This requirement has relevance for sporting groups preparing and selling food through canteens and kiosks for example.

Under the terms of the Act, sporting groups selling food need to prepare a written safety plan following appropriate food handling processes. This plan must be included with any application for registration of food-handling premises. If your organisation prepares or serves food, you must ensure your food preparation and handling practices are fully compliant with industry requirements.

For further information regarding safe food preparation and handling, visit the Food Safety Victoria website: <http://www.health.vic.gov.au/foodsafety>

Occupational Health & Safety

Under Victorian OH&S laws you must provide a safe and healthy workplace, and ensure other people, such as participants, spectators and the general public, are not endangered by the conduct of your business. Groups hiring and leasing facilities should check with the leasing body to ensure all facilities and equipment used as part of your activities are OH&S compliant.

WorkCover

Work Cover is compulsory in Victoria and all Victorian workers are covered by workplace injury insurance. By law, all organisations in Victoria who employ workers and pay more than \$7,500 per year in remuneration, including wages, benefits and superannuation, or who engage apprentices or trainees, must hold a current workplace injury insurance policy.

Organisations not holding an appropriate Work Cover policy can be heavily fined and face the full costs of any claims made while uninsured. The costs of providing benefits to an injured worker can run into the hundreds of thousands, or even millions of dollars. For further information visit: www.workcover.vic.gov.au/wps/wcm/connect/WorkSafe

Emergency Procedures

All building structures and other confined spaces must have in place adequate emergency management, warning and evacuation procedures. This includes appropriate location of operable fire extinguishers, blankets, alarms and the like on premises as required. All facilities must have clearly visible and easy to follow warning and evacuation procedures.

Failure to meet emergency procedure legal requirements is a breach of law. Groups hiring and leasing facilities should check with the leasing body to ensure all facilities and equipment used as part of your activities meet required emergency procedures.

Responsibility for Provision of Evidence

Councils may require lessees to provide proof of evidence to show they have met expected compliance requirements prior to allowing the authorised activity to commence. As the lessor of the facility council's are well within their rights to ensure compliance requirements are met and to require proof of evidence.

Relevant evidence councils may require includes:

- Evidence of Incorporation
- Insurance cover notes for required insurance
- Appropriate licences if required, such as liquor, gaming & food safety licences
- OH&S and WorkCover certificates if applicable
- Appropriate risk management plans
- Maintenance procedures and schedules for items for which the club is responsible
- Required emergency procedures

INSURANCE

Councils have the right to require lessees to hold appropriate and adequate insurance to cover claims arising that are either fully or partly attributable to the fault or negligence of the lessee. As previously noted, councils do not have the right to require lessees to provide cover for incidents arising as a result of the negligence of the council themselves or other unrelated parties.

It is important lessees have appropriate insurance cover to fully meet all of their insurance needs. Following is an outline of some of the more common types of insurance relevant for sport and recreation organisations.

Public Liability Insurance

Public liability insurance indemnifies the insured against legal liability resulting from damage to property, loss of use of property, and death or bodily injury to members of the general public, where the loss, damage or injury to the property or third party was caused by a negligent act on the part of the insured.

Note: Public liability insurance does not cover breaches of professional duty and is not the same as personal accident injury insurance.

Owners and occupiers of sporting facilities have an obligation to ensure facilities remain in a safe condition so that persons using or visiting them are not injured. It should be remembered you don't necessarily need to be the owner of the facility to be held responsible for its condition if a person was injured while the facility was under your control. Even a short-term hirer of a facility may be regarded as an occupier by the law for the duration of their use of the facility.

Council's will usually insist groups leasing or hiring facilities have appropriate public liability insurance. Council's are well within their rights to require groups to hold such cover and it is vital your organisation has appropriate public liability cover. It is not however appropriate for council's to require organisations leasing and hiring facilities to

provide cover in cases where damage, loss or injury was caused through the negligence of a person(s) other than the leasing or hiring organisation.

As noted previously some clauses contained in agreements, such as joint names, hold harmless and principle indemnity clauses, can pass on undue responsibility to the lessee. It is important you discuss your public liability requirements and any relevant clauses in lease or hire agreements with your insurance broker or agent.

Professional Indemnity Insurance

Professional indemnity insurance covers the insured against claims for damage and loss resulting from a breach of professional duty. For sport and active recreation organisations, a breach of professional duty may occur when coaches, training staff, referees or medical staff offer instruction or advice, and there is an error or omission, which results in injury, financial loss or other damage.

As with public liability cover it is important to check if your professional indemnity cover protects both your organisation as an entity, as well as the individuals within the group.

Directors & Officers Liability Insurance

Directors and officers insurance protects directors/committee members and professional staff as individuals, against a wrongful act committed in the course of carrying out their respective duties. Wrongful acts include breach of trust, breach of duty, neglect of duties, error and omission. As an example, a director allowing an organisation to continue to trade while insolvent is considered a 'wrongful act'.

Directors and Officers insurance covers claims made against the insured organisation's individual directors and officers. It does not cover claims against the organisation itself, and excludes liability relating to physical injury, death and/or property damage to third parties.

Association Liability Insurance

Association liability insurance policies combine professional indemnity and public liability insurance under one policy document and are tailored specifically for associations incorporated under the Associations Incorporation Act. Unlike directors and officers insurance alone, association liability insurance provides cover to both the insured individual directors themselves, as well as to the insured organisation as an entity.

Note: Association liability insurance excludes liability arising from death, injury and/or property damage to third parties.

Personal Accident & Injury Insurance

Personal Accident and Injury Insurance provides agreed cover to those insured should they be injured whilst participating in the insured activity. The terms and conditions of cover for personal accident policies vary depending on the level of cover you purchase. Some of the benefits available include death and permanent disability, loss of income and non-Medicare medical expenses, for example physiotherapy costs.

There is an inherent risk of injury any time an individual participates in a sport and active recreation activity and while most participants acknowledge this is an acceptable risk, knowing the organisation holds personal accident and injury insurance gives participants an added peace of mind.

Sports Participation Risk Exclusions

Various exclusions are included from time to time in insurance policies. Some liability policies do contain exclusion clauses for participation in sporting events, for example many travel insurance policies include this exclusion. Obviously any 'sports participation risk' exclusion is not appropriate for a policy held by a sport or active recreation organisation.

Volunteer Workers' Personal Accident Insurance

Volunteer workers' personal accident insurance covers volunteer workers against accidental injury, disability or death occurring during the course of their duties in situations where no one is legally liable.

Volunteer workers' personal accident insurance usually provides cover for loss of income where the injured worker is unable to work and forced to take time off. Volunteer cover is generally offered because volunteer workers are not covered in the same way paid workers are covered under workers' compensation.

Protection of Property

Requirements for property protection will vary depending on the assets the organisation either owns or is responsible for. Each organisation must ensure they are fully aware of exactly what they would be expected to replace in the event of damage or theft under the terms of their lease or hire agreements.

Particular attention should be paid to any building replacement requirements. In most cases where clubs lease premises, it would be expected the council as the owner would hold building insurance. There may however be some specified clauses held in lease agreements for the lessee to insure certain elements of the property for damage, in particular glass replacement and damage to fittings and fixtures.

Insurance Brokers and Agents

When looking for the insurance policy that best meets your needs, your first concern should be to find a reputable insurance broker or agent. Insurance brokers and agents provide the vital link between consumers and insurance companies. A good insurance broker or agent will assist consumers by arranging the best insurance cover for your specific requirements.

In essence, the primary distinction between insurance brokers and agents is that insurance brokers are the authorised representatives of people looking for insurance, while agents are the authorised representatives of an insurance company. Where an agent therefore usually only offers the products of the company(s) they represent, in contrast, a broker does not necessarily represent one company, but rather shops around for a policy which best suits the needs of the client.

Choosing a particular broker or agent is simply a matter of preference and it is up to you as an organisation to decide who is the best broker or agent for your needs. In general terms however, a good broker or agent will discuss with the client risks or hazards they feel require cover and will recommend appropriate insurance cover options. Once the client agrees upon the types and levels of cover required, the broker or agent should then obtain appropriate cover at a reasonable price from a reliable insurer.

Claims Made VS Occurrence based policies

[Claims Made Policy](#) - In simple terms, claims made means the policy will only respond to claims that are actually made against the insured during the period of insurance.

Claims made policies are generally applied to professional indemnity, directors and officers and association liability insurance policies. They will contain wording something like “the insurer will pay for loss which the insured is legally liable to pay on account of any claim first made against the insured during the period of cover, and which is notified to the insurer during the period of cover.”

A Claims Made policy requires that both the incident leading to a claim, and notification to the insurer of a claim being made, occurs during the period of insurance cover. A Claims Made policy will normally include a ‘retroactive date’. As the following example indicates, for a Claims Made worded policy to respond to a claim, the incident in question must have occurred after the retroactive date, and the claim must have been made during the period of policy cover.

Example 5: Claims Made policy validity

If the Claims Made policy runs from 3 August 2004 to 3 August 2005, and the retroactive date is 3 August 2004, the policy will only respond in cases where the incident occurred after 3 August 2004 and before 3 August 2005, and if the actual claim itself is made prior to 3 August 2005.

Occurrence Based Liability Policies - under an Occurrence Based wording, the insurer who provides/provided cover at the time the incident occurred will be responsible for responding to the claim, irrespective of when the actual claim is made. An occurrence based policy will contain wording something like “the insurer will pay a claim for legal liability if the event that gives rise to the claim occurs/occurred during the period of insurance.”

Occurrence based wording generally applies to public and products liability policies. This is primarily due to the fact these liability cases often involve litigation. As such there can be an extensive period of time between an event actually occurring and liability being determined. In these cases it is important the response to the claim is made by the insurer of the policy that is/was in place when the incident that led to the claim actually occurred.

Example 6: Occurrence Based liability policy validity

An incident occurs on 24 May 2004, which results in injury. In 2006, as a result of legal action an award for damages is made. Under an Occurrence Based Liability wording the group who provided insurance cover on the 24th May 2004 will be responsible for responding to the claim.

Offshore Policies

Offshore policies are sometimes considered an option in cases where on-shore insurance is difficult to secure. Often, an offshore policy will be able to be secured when an onshore policy cannot be because the country in which the policy originates may not insist on the same high industry standards required in Australia.

Direct Offshore Foreign Insurers (DOFI's) are unauthorised foreign insurers who are not currently subject to the Insurance Act 1973. As such, whilst they may be subject to prudential regulations in their home country, these regulations may not meet the stringent standards required in Australia.

While you may find a cheaper premium offshore, or alternatively find an offshore policy is the only policy you can obtain for your needs, there can be added risks should a claim need to be made. You may find the offshore insurer's standards do not meet the standards required for cover in Australia. This makes it difficult to enforce your rights to make a claim against a policy as the insurer is outside the Australian jurisdiction it can be very difficult to force them to honour a policy should they choose not to co-operate.

Whilst an offshore policy may seem like a solution, and showing your [cover note](#) to a lessor may secure your lease, groups should be wary of such policies, particularly those offered by small, unknown companies. If you are considering an offshore policy ensure it does meet Australian standards and you can make a timely claim against the policy if required.

Responsibility to Disclose Information

Before you enter into a contract of general insurance with an insurer, you have a duty under the Insurance Contracts Act 1984, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. The same duty arises on a renewal, extension, reinstatement – or variation of the policy.

The disclosure required is especially important in matters relating to the physical risk, past claims, cancellation of insurance covers, the imposition of increased premiums, insolvency or criminal convictions. Disclosure is not limited to specific questions in a proposal or matters applying to the insured named in the policy but also includes other relevant matters such as past business dealings or private insurances.

If you breach your duty to disclose information, even innocently, the insurer may be able to reduce its liability in respect of a claim. If it can be proven the non-disclosure is fraudulent, the insurer may also have the option of voiding the policy from inception.

GLOSSARY OF TERMS

Aggregate Claim Limit - limit on the total amount of money available for all claims made during the life of the policy. Once the aggregate limit is reached no further payment on claims will be made.

Assignment - transfers the use of the facility to a third party. Under assignment the third party assumes all responsibilities and obligations. If only part of the rights are to be transferred, for example access for a specified period of time, this is 'subletting' rather than assignment of the premises.

Association liability insurance – insurance policy specifically tailored for incorporated associations providing cover to both the insured individual directors themselves, as well as to the insured organisation as an entity under a single policy.

Bank Guarantee or Security Deposit - a promise given by your bank to pay the landlord an amount up to the limit of the bank guarantee if you break the terms of the lease. In general, the amount of the guarantee or security deposit is equivalent to 3 months rent.

Binding on third parties - if the lessor sells the land and/or facility during the period when the lease is still current, the purchaser will take the land and/or facility subject to the lease.

Building Insurance – provides cover for damage to property and fixtures. Insured events include damage and loss due to fire, lightning, storm, water, impact and malicious acts such as vandalism, and any other events as agreed with the insurer.

Capital Benefits – provides cover for injuries resulting in death or permanent disability.

Cancellation & Abandonment Insurance – protects the insured against costs and loss of revenue associated with cancelling, postponing or abandoning activities due to specified events, for example inclement weather or non-availability of a venue.

Certificate of Currency – a written statement from an insurer or broker confirming insurance cover is in place and defining the level of cover that exists.

Civic Mutual Plus (CMP) - a self-insurance scheme providing public & products liability and professional indemnity insurance cover for Victorian Local Government Authorities.

Claims Made Policy - the policy will only respond to claims that are actually made against the insured during the period of insurance.

Cover Note – a temporary contract agreeing to provide insurance cover while a formal insurance policy contract is prepared.

Create an Interest – a lease agreement grants to the lessee exclusive occupancy over the land or facility and is categorised at law as an interest in land. In contrast, a licence simply gives permission to use land or a facility for a stipulated purpose(s) rather than providing exclusive use.

Cross-Liability Clause - extends the policy so that the words ‘the insured’ are considered as applying to each party comprising the insured. Cross-liability clauses are important for sport and active recreation organisations if an insurance policy provides cover for both the organisation as an entity and individuals within the organisation e.g. coaches, officials, players. A cross-liability clause allows one of the parties insured under a liability policy to take legal action against another of the parties insured under the same policy.

Crown Land - public land managed and held in trust by the Government for the benefit of the Victorian community.

Directors and officers insurance – insurance cover to protect directors, committee members and professional staff as individuals, against a wrongful act committed in the course of carrying out their respective duties.

Employers Practices Insurance - provides protection in regard to losses which the insured may be legally required to pay arising out of claims associated with employment practices such as discrimination, unfair dismissal, harassment or breach of contract for example.

Encumber – to use the leased land or facility as security for payment of a debt, for example to burden land with a charge such as a mortgage

Facility Bond - requirement to hold a stipulated sum of money available for use to cover any costs which may be incurred by the lessor for any repairs required to bring the facility up to a satisfactory condition at the finish of a lease or hire period. Often held as a [bank guarantee or security deposit](#).

Fidelity Insurance Cover - protects the insured for any loss of money, negotiable instruments, bearer bonds etc., belonging to the insured where a director, officer or employee of the organisation sustains such a loss by reason of a dishonest or illegal act.

Gross Rent – total rent payable, including [outgoings](#). If your agreement stipulates gross rent, this is the only amount you should be required to pay on a regular basis.

Hire - agreement to allow temporary use of land or a facility at a set price and/or under specified terms and conditions.

Hold Harmless Clause - Contractual clause where one party assumes a liability risk for another and, thus, effectively indemnifies the named party from any liability.

Incident - any loss, damage or injury that has the potential to result in a claim for compensation.

Indemnity – agreement by one party to reimburse another party for losses which have occurred, or which may occur. Indemnity insurance policies should guarantee the insured is restored to approximately the same financial position they were in post claim, as they were prior to the claimable event. (Note: this does not necessarily equate to new for old replacement.)

Interested Party - any person or entity that possesses a legal or equitable interest in a property. Your insurance policy will only provide cover to an interested party if that party is named as part of the policy with the full knowledge and consent of the insurer.

Joint Names Insurance – an insurance policy providing cover for both the insured group and another party jointly named on the policy.

Lease - an agreement/contract between two people/organisations concerning the use by one of the property of the other.

Legally binding - agreement under a written or spoken contract to behave in certain ways. The terms and conditions of such a contract can either prohibit or define appropriate behaviour under the agreement. Violation of terms in a legally binding agreement can either void the contract, or cause legal repercussions.

Lessee (or tenant/hirer) - a person or entity who is provided with property to use and/or possess in exchange for a payment of funds. By law the lessee has a right to enjoy the premises leased for the term stipulated, and to use them for the purpose agreed upon.

Lessor (or landlord/owner) - the person or entity who owns or controls a property and who provides a lessee with access to that property in exchange for a payment of funds.

Licence - permission to use land or a facility for the stipulated purpose(s).

Limit of Indemnity - the maximum amount for which an insurance policy will indemnify an organisation for any one event.

Local Government Authorities – Victorian local/municipal councils.

Long tail industry - long tail refers to the length of time that can pass between a premium for a policy being paid, and the cost of the claim against that policy being realised. Long tail usually pertains to liability insurance, particularly personal injury claims, which may involve long court cases where claims can be made many years after the premium was paid. Insurers in effect sell their product some years before they know how much the product will ultimately cost them, thus creating the reference to a 'long-tail' industry.

Market Rent Review - a periodic review of rent based on an assessment of the value of a similar rental premise in the private market.

Minor Gaming - in Victoria Minor Gaming includes a range of activities such as the conduct of a raffle, conduct of bingo games, sale of lucky envelopes or conduct of other fundraising events. To legally conduct these activities clubs/organisations may require a minor gaming permit. Visit www.vcgr.vic.gov.au for further information.

Municipal Association of Victoria (MAV) - peak body representing Victorian Local Government Authorities.

Negligence - failure to exercise the level of care an ordinary prudent person would exercise by either taking an action which a prudent person would not take, or failing to do that which a prudent person would do.

Negligence-based liability – liability for costs and/or damages incurred as a result of the negligence of an individual or organisation who had reasonable duty of care expectations.

Net Rent - the amount of rent payable to the landlord before outgoings are recovered from the tenant. If your lease stipulates net rent, you may also be required to pay additional amounts for defined outgoings.

Occurrence Based Liability Policies - the insurer who provides/provided liability cover at the time the incident occurred is responsible for responding to the claim, irrespective of when the actual claim is made.

Option - the right to renew a lease for a set period of time as stipulated in the existing lease. The lessor is bound to accept any renewal for the option period provided the lessee complied with the terms of the lease. The lessee is not bound to exercise an option.

Outgoings – additional costs paid on top of the basic rent payment. Rents are often quoted 'excluding' or 'before' outgoings. Additional outgoings can include council rates, water rates, land tax, management fees, security, cleaning, etc.

Personal Accident and Injury Insurance - provides agreed cover to those insured should they be injured whilst participating in the insured activity.

Professional Indemnity/ Errors & Omissions Insurance – provides compensation cover to a third party for losses arising as a result of negligent acts, errors or omissions by one of the insured during the conduct of their normal business.

Principals Indemnity - an “Indemnity to Principals” clause requires that the insured party’s insurance policy (in this case the sporting organisation/club) extend indemnity cover to the principal (in this case the council as lessor). A principals indemnity clause will only be valid with the full knowledge and consent of the insurer.

Public Liability Insurance - indemnifies the insured against legal liability resulting from damage to property, loss of use of property, and death or bodily injury to members of the general public, where the loss, damage or injury to the property or third party was caused by a negligent act on the part of the insured.

Rent - the amount payable by the lessee to the lessor for the lease or hire of a facility.

Repudiation – rejection of an agreement or disclaiming of an agreement as invalid. The breach of an essential term of a lease or hire agreement for example would render the agreement invalid. This could be considered a repudiation of the lease.

Reserved Crown Land – Crown land formally reserved for a particular purpose, such as recreation reserves, public parklands and community halls.

Seasonal allocation - occupancy granted for a portion of the year relating to defined seasonal dates.

Special Contingency Insurance – covers the insured for financial loss arising as a result of a special contingency, such as a golf ‘hole-in-one’ prize.

Subletting - the leasing of premises by the lessee to a third party for part of the lessee's remaining term.

Subrogation - in a legal sense means one party has the right to 'step into the shoes' of another party for the purposes of bringing a claim for damages. In insurance terms, this provides the insurer with the right to recover costs paid by the insurer from a third party who was wholly or partly responsible for that loss.

Term - the length of time for which the lease or hire agreement commits the lessor and lessee.

Waiver – the knowing, intelligent, and voluntary surrender of a known right or claim.

Waiver of subrogation - an endorsement issued by an insurer waiving its right to make a claim against a third party.

Weather (Pluvius) Insurance – provides an agreed sum of cover for financial loss should a specified weather event, such as rain, occur within a specified time, on a specified date and at a specified location.

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APPENDICES

1. [Example Facility Access Agreement](#)

(Adapted from work done by JLT Sport Insurance and Civic Mutual Plus)

2. [Example Maintenance Responsibilities Schedule](#)

3. [Example Match Day & Training Session Checklist](#)

(Adapted from information provided by Ballarat University)

4. [Example Sports Ground Inspection Form](#)

(Adapted from information provided by Ballarat University)

Appendix 1: Example Facility Access Agreement

COUNCIL: <<insert Council details>>
(herein after referred to as the "Council")

USER GROUP: <<insert user group/club details>>
(herein after referred to as the "Club")

PREMISES: <<insert address of reserve/ground/pavilion as appropriate>>

The specific section of the reserve that applies to this agreement is that part of the land (the "land") clearly identified in the attached Appendix <<Attach Relevant Appendix>>

The specific building(s) (the "building(s)") that applies to this agreement being <<insert name of any buildings/pavilions that the user group/club is permitted to use under this agreement, if there are none insert the word "NIL">>

All car-parking areas associated with this agreement are clearly identified in the attached Appendix.

USE OF THE PREMISES: The Club shall use the land for the purpose of <<insert appropriate purpose>>

The Club shall use the building(s) for the purpose of <<insert appropriate purpose>>

The Club shall not permit any offensive or illegal act, trade, business, occupation or calling at any time during the term hereof to be exercised, carried on, permitted or suffered in or upon the premises and will not permit any act, matter, or thing whatsoever at any time during the term hereof to be done in or upon the premises which shall or may cause annoyance, nuisance, grievance, damage or disturbance to the Council or occupiers or owners of adjoining or neighbouring lands or buildings.



COMMENCEMENT

DATE: The Club must return this User Agreement signed together with other documents required under this User Agreement before the date noted below. The Club will not be permitted to use the premises without return of these documents.

DATE: <<Insert due date>>

TERM: The effective term of this agreement is from

<<Insert start date>> to <<Insert finish date>>

TIMES AND DATES

OF USE: The Club shall have use of the premises in accordance with the following dates and times as agreed with and approved by Council.

<<Insert relevant times & dates for approved use>>

If the Club wishes to alter its scheduled use of the premises it must gain written approval from Council.

The Council will endeavour to accommodate the Club in relation to both application for use of facilities and alteration of agreed times and dates of Use.

APPLICATION FOR USE FORM:

The Club must complete all sections of and sign the <<insert relevant application for use form>> and return to Council by the due date prior to the commencement of each season. Applications cannot be considered unless accompanied by a current copy of the club's "Certificate of Currency" for Public Liability Insurance.

TERMS & CONDITIONS OF USE

RELATIONSHIP WITH OTHER USERS OF THE PREMISES:

This agreement recognises the right of the Council to make the premises available for use by other parties outside times other than those specified by the Club in the seasonal ground application form if appropriate. The Club shall respect the rights of the other parties in their use of the premises.

Note: in cases where multiple groups use a facility it is reasonable to expect Council will be responsible for determining use of premises. In cases where a single club has responsibility for a facility, such as a long term lease on tennis courts and a pavilion, it is reasonable to expect the lessee will be responsible for determining use of premises by outside parties pending agreement from Council.

RENTAL:

The Club shall pay the Council seasonal rental for the use of the facility. Rental fees will be as per Council's fees and charges policy. If the Club extends its use of premises there may be an additional charge.

Clubs <<are / are not>> responsible for the payment of ground rental during nominated ground renovation periods, less any amount paid to Council for alternative facilities.

Failure to rental fees in full and on time may jeopardise the Club's use of the facility.

Note: Fees should be provided in writing by Council and include any annual increase rates etc.

CAPITAL WORKS / FUNDING GRANTS:

A written proposal must be lodged with Council including preliminary design plans and costings and confirmation of club contribution. The Club will be ineligible for consideration of capital works and funding grants if it has defaulted in its payment of debts to the Council.

REVIEW OF RENTAL:

The rental shall be reviewed by the Council from time to time. There shall be no increase in rental for the duration of the term of this agreement unless otherwise approved as part of the Council's Fees and Charges Policy for Sporting Reserves, or otherwise as agreed between the Council and the Club.

FIXTURES AND FITTINGS:

All fixtures and fittings currently installed and any improvements to the premises by the Club are and remain the property of the Council.

ALTERATIONS TO PREMISES: (includes buildings & grounds):

The Council's written consent is required prior to the Club:

- altering or permitting the premises to be altered
- making any addition to the premises
- installing any plant or equipment on the premises
- removing any part of the premises
- removing any plant or equipment from the premises

PERMITS:

The Club must apply for and acquire any required permits.

INSURANCE:

1. Public Liability Insurance

1.1. The Club shall, at all times during the Approval Term, be the holder of a current Public Liability Policy of Insurance ("The Public Liability Policy") in respect of the activities specified in the Application in the name of the Club providing coverage for an amount of at least <<insert reasonable specified amount>>. The Public Liability Policy shall be effected with an insurer approved by the Council.

If you have any queries on whether an insurer is approved, please contact Council's Risk Management on <<insert phone number>>.

Indemnity Clause:

NOTE: As discussed previously, Council may require a lessee to extend liability cover to the Council as a 'Principal' or 'Interested Party' to ensure Council is not held responsible for costs arising from an incident caused by, or attributed to, by the lessee. It is vital the wording of such a clause is appropriate. As previously noted please pay particular attention to any indemnity clauses contained in your agreement and seek appropriate professional advice from your insurer or legal counsel. Following is an example of an appropriate indemnity clause:

The lessee agrees to provide cover to the council under their own public liability policy indemnifying the council as principal from all actions, costs, claims, charges, expenses, penalties etc arising from the lessees activities, but only to the extent the damage is caused by or attributable to the fault of the lessee or associated person(s).

2. Property Insurance

- 2.1 The Club shall be required to effect and maintain Property Insurance at all times during the term of the agreement for Contents/Equipment/Materials purchased or supplied by occupiers, and not forming a fixture or fitting of a building/facility.
- 2.2 In the event of insured damage requiring repairs/ replacement, Council's Property insurance policy covers cleaning of the building structure, walls, fixed cupboards and bench tops and floor coverings. Council's Policy does not extend to indemnify the Club.
- 2.3 Contents/Equipment/Materials purchased or supplied by occupiers, and not forming a fixture or fitting of a facility, remain the property of the occupier and are not insured by Council. This includes, equipment (refrigerators, heating or cooking appliances), curtains, light fittings etc.
- 2.4 Council does not insure personal belongings, money and private property brought onto the premises.

3. Proof of Insurance

- 3.1 Before the Agreement commences and whenever requested in writing the Club shall produce evidence to the satisfaction and approval of the Council of insurances effected and maintained.

- 3.2 A Certificate of Currency/Insurance of the Public Liability Insurance policy stating, the level of cover, period of cover, and exclusion clauses must be provided to the Council as part of this Agreement.
- 3.3 If, after being requested in writing by the Council, the Club fails to provide evidence of insurances required by this Agreement, the Council will issue a final notice. Until the Club produces evidence of compliance with its insurance obligations, approval for use of the facility is revoked.

4. Notices of Potential Public Liability Claims

- 4.1 Incidents arising out of the activities or actions of the Club involving either Personal Injuries or Property Damage should be reported to the Club's own Insurer.
- 4.2 The Club shall as soon as practicable inform the Council in writing of any occurrence involving the responsibilities of both the Club and Council, that might give rise to a claim. The Club shall keep the Council informed of subsequent developments concerning the claim.

RISK MANAGEMENT:

1. A Risk Assessment shall be carried out by the Club before the commencement of the Agreement and before each season (if applicable) and any concerns or issues should be raised with Council.
2. The Club acknowledges that they will be responsible for complying with emergency and incident management procedures and risk management practices implemented by Council in relation to the facility during the Approval Term, provided they receive reasonable notice of such procedures.
3. The Club agrees, prior to the commencement of this Agreement, to confirm to Council details of their risk management plan and policies which address the risks associated with the user's use of Council's facility and how such risks will be addressed. In the alternative, the users shall verify to Council's satisfaction that they undertake a suitable risk management program which addresses the risks associated with the use of Council's facility. The Club should ascertain and implement risk management programs and procedures that are considered standard by their own insurer and representative Association.

- 3.1 The Club acknowledges the Council reserves the right, following consultation with the Club and or any body representing the Club, to withdraw the premises, or any part thereof from use and to cancel this user agreement if it considers the premises or any part thereof are unsafe and /or are unsuitable for use by the Club. Notwithstanding the above, it is agreed the Club must ultimately determine whether the premises, are safe for use by the Club. The Council does not warrant the premises as fit and suitable for the Clubs intended use (notwithstanding the aforementioned, this includes training and actual match day).
- 3.2 Further to clause 3.1, the Council acknowledges that unless the Council formally withdraws the premises for use, the Club - in accordance with any regulations the relevant governing bodies for the Club have in place – has responsibility to determine suitability for activities to commence.
- 3.3 Before commencement of training or play, on each occasion the club shall complete and retain a formal checklist assessing the playing surface and immediate surrounds to determine suitability for play to commence.

Note: examples of surface conditions checklists are included in Appendix 3 & 4.

- 3.4 Should the Council exercise its rights pursuant to clause 3.1 hereof, the Council will use its best endeavours to find an alternate venue for the Club to use however the Club agrees to hold the Council harmless if an alternative venue is not available/ can't be found.

4. As far as reasonably practicable the Club must:

- 4.1 Exercise reasonable care that only competent employees and/or members are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition.
- 4.2 Take all reasonable precautions to prevent personal injury and damage to property

MAINTENANCE RESPONSIBILITIES:

Refer to Appendix 2 for an example of a Buildings and Grounds maintenance responsibility schedule for the Club and Council.

HIRING OF FACILITIES:

Clubs are encouraged by Council to hire facilities to other community groups. However both the Club and the intended user must determine the safety and suitability of such use prior to formally entering into any such hire agreement. Council must formally agree to other groups using Council's facility.

Note: as noted previously a hiring of facility clause similar to the one above would be relevant in cases where a single club has responsibility for a facility, such as a long term lease on tennis courts and a pavilion. In such cases it is reasonable to expect the lessee will be responsible for determining use of premises by outside parties pending agreement from Council.

COMMUNICATION:

The Club must appoint a Liaison Officer to communicate on behalf of the Club as an organisation with the Council. The Club must keep Council informed of any changes to club contact details.

DISPUTES:

The Council and the Club must endeavour to resolve disputes through negotiation. If a dispute cannot be resolved by negotiation then a determination in writing by Council shall apply.

VACATING THE PREMISES:

At/before the termination date of this agreement the Club shall leave the Premises in a clean and tidy condition and in the same condition as at the Commencement Date together with any additions or improvements. The Council may inspect the premises and the Club shall make good any items reasonably required of it to the satisfaction of the Council.

TERMINATION:

This agreement may be terminated or rejected as invalid if either party breaches an essential term of the agreement.

RESPONSIBILITIES OF THE CLUB:

The Club shall:

1. Immediately notify the Council of any maintenance issues requiring attention. In the case of vandalism including glass breakage, clubs are required to notify Council via telephone <<insert phone no.>> for emergency maintenance.
2. Abide by all of the Council's policies concerning signage and other regulations.
3. Be responsible for ensuring all Council facilities are smoke free venues, that is no smoking is to occur inside any buildings at any time.
4. Ensure where alcoholic beverages are sold and consumed within the pavilion and reserve, they are done so in accordance with an appropriate Liquor License.
5. All user groups are strongly encouraged to join the Good Sports Program which aims to reduce alcohol and other drug problems, increase the viability of sports clubs and increase the range and quality of sports available within the community.
6. Ensure alcoholic beverages will not be consumed in conjunction with junior activities - junior training and junior competition.
7. If any residential properties are located in close proximity to the reserve, Council may notify nearby residents of the club's intention to sell alcohol from the reserve prior to agreeing to the nominated hours. If valid objections are received from residents, Council may vary the nominated hours in order to address matters raised by residents. The Club agrees to abide by any such determination by Council.
8. Comply with all Local Laws, the Liquor Control Act, the Health Act, Public Building Regulations and all other regulations relating to the care, protection and management of the premises as a Council facility.
9. Provide a suitable number of competent attendants and supervisors to ensure efficient supervision and safety of people within the premises, as well as the preservation of order during the term of the agreement.
10. Not change the locks on any door of the pavilions, change rooms, toilets or any part of the premises.
11. Permit the Council at all reasonable times to enter the premises.
12. Ensure all fixtures and equipment used in the course of club activity are in a safe and effective order.

13. In accordance with Risk Management clause 3 of this agreement, the Club is responsible for thoroughly inspecting the ground before the commencement of training or competition play. Clubs should check for debris, holes and general condition. Evidence of inspections are to be kept with club records for a minimum of six (6) years. Should the ground be deemed to be unplayable, no play is to proceed and Council is to be notified immediately.

Note: examples of surface conditions checklists are included in Appendix 3 & 4.

14. The Club shall seek to improve the surface and surrounds to reduce risk. Any such work shall be notified to the Council and where practicable approval from the Council shall be sought before such work is carried out.
15. Ensure any equipment used complies with Standards Australia requirements if appropriate, for example portable soccer goalposts must comply with appropriate guidelines.

The Club in relation to any Building or Structures on the Premises shall:

1. Maintain the interior of the building of the premises including any fittings in a clean and tidy condition at all times and be responsible for general day-to-day maintenance.

Note: a clearly defined schedule of maintenance responsibilities for the Club and Council should form part of the lease agreement. See Appendix 2 for an example schedule of maintenance responsibilities.

2. Reinstate any damage to the premises to the satisfaction of Council where the damage has been caused a Club Member or a person associated with the Club.
3. Pay all services relating to the premises including electricity, gas, water, telephone and the like. In relation to public security lighting, where it cannot be metered separately, the Council after consultation with the Club will determine the proportion, if any, to be paid by the Club.
4. Be responsible for the security of any building during the term of this agreement including maintenance of a key register, key allocation to club members and the cost of the security. If a security company is used, the Council reserves the right to nominate the security company.
5. Remove or arrange to have removed all pavilion waste/rubbish if deemed necessary by Council.

The Club in relation to any Grounds on the Premises shall:

1. Place all external litter in the bins provided. The Club is responsible for cleaning the grounds, spectator areas, car parks, change-rooms, social clubrooms and all other areas occupied by the Club during its occupation under the agreement. Where additional cleaning is required to be carried out by the Council, the Club shall reimburse the full cost to the Council on demand.
2. Store all watering equipment (hose and sprinklers) and its own equipment away neatly and safely in the designated areas at all times when the equipment is not in use.
3. Be responsible for non-permanent ground markings on ovals. Line marking is to be completed in accordance with Council requirements and the standard sporting ground dimensions. No other line marking will be allowed unless special arrangements are made with Council. No herbicide or lime is to be used in line marking. Permanent ground markings will only be carried out by the Council on a fee for service basis.
4. Undertake the watering of grounds with manual watering systems as directed by the Council and maintain the areas surrounding pavilions and clubrooms.
5. Be responsible for the construction of any advertising/sponsorship signs on buildings and fences. No signs shall be erected without first obtaining the Council's consent in writing. If required by the Council, the Club must remove all advertising/sponsorship signs at the end of the term of this agreement and make good any damage.
6. Complete a Seasonal Ground Application form and lodge by the due date including a Certificate of Currency for Public Liability Insurance and full ground rental payment prior to the commencement of club activity, including pre- season activities each season.

The Council in relation to any Building or Structures on the Premises shall:

1. Be responsible for the external maintenance of the building.
2. Repair vandalism which has not been caused by the Club or its members or persons associated with the club.
3. At its sole discretion reinstate the premises if it is partly or wholly destroyed.

The Council in relation to any Grounds on the Premises shall:

1. Undertake mowing, top dressing, over sowing and maintenance of the playing surface (turf wickets excluded)
2. Operate all automatic watering systems.
3. Provide and service any permanent litter bins (excluding pavilion litter bins and pavilion waste).
4. Undertake erection, maintenance and removal of goal posts.
5. Cover and uncover synthetic cricket pitches between seasons where and when necessary.
6. Undertake tree maintenance.
7. Withdraw approval for use when any facilities which are deemed unplayable or unsafe, are scheduled for ground renovation, maintenance repairs or are required for a community event.



DECLARATION

Persons should be aware that signing this Agreement may have an affect on any current insurance policy that covers the Club for Public Liability. If there are any concerns about the effect of signing this Agreement they should be discussed with the Club’s insurer and/or legal counsel.

I/We acknowledge having received and read a copy of the conditions imposed within this Agreement, and further undertake to be responsible for ensuring that all individuals and groups under our control, comply with these conditions.

DATED <<insert date of signing>>

Signed on behalf of <<insert Council name>>
<<insert proper delegated authority>>

in the presence of:
(Witness to Council’s signature)

Signed on behalf of <<insert name of lessee>>
<<insert proper delegated authority>>

in the presence of:
(Witness to Lessee signature)

All relevant documents and information to the agreement should be attached

Note: The information contained in this example Access Agreement has been adapted from work done by Civic Mutual Plus and JLT Sport Insurance as part of the Local Government / Sports Alliance Committee of which VicSport is a member

Note on Example Facility Access Agreement

Please note this is an example template only and has been designed to give users a general idea of what an appropriate facility access agreement might look like. Agreements will vary between Council’s, and will also vary depending on the type of agreement being signed, e.g. long-term lease versus short-term hire agreement. While the wordings may vary, lessees are advised to always take note of any indemnity or other clauses included in agreements which have the potential to create traps for the unwary such as those previously outlined in this document.

Appendix 2: Example Maintenance Responsibilities Schedule

Following is an example provided by a local tennis club of a clearly defined maintenance responsibilities list for a Pavilion which the club has exclusive access to under a long-term lease.

Where possible any club as a lessee should request and agree to a clearly defined list of maintenance responsibilities from the lessor. This assists in clarifying the particular responsibilities of each party, and also helps to ensure unreasonable responsibility is not taken on by either party.

MAINTENANCE ITEM	CLUB'S RESPONSIBILITY	COUNCIL'S RESPONSIBILITY
1. Heating Fixtures	Pay all gas and electricity bills, service, replacement & repair as required.	No responsibility.
2. Building Alterations	For determining and documenting the specific needs of the building relating to any requests to Council for building alterations.	For assessing all requests submitted and if approved by Council, ensuring satisfactory completion of work by the responsible parties.
3. Curtains & Blinds	Regular cleaning and repair.	No responsibility.
4. Ceilings	Repairs due to foreseeable misuse.	Major repair and/or replacement due to structural faults, age etc.
5. Doors (inc. cupboard doors & door fittings)	Regular cleaning and repair of internal doors due to foreseeable misuse.	Replacement due to age or structural fault. Repairs on all external doors.
5. Electrical wiring and fittings in building	Repair and replacement due to foreseeable misuse.	All building wiring from main supply to and including switchboard, power points, switches and light fittings.
6. Fire Extinguishers	To fill when discharged.	For annual maintenance and replacement due to age.
7. Floor surfaces & coverings	All regular cleaning and maintenance.	No responsibility.
8. Glass	To keep clean and replace internal breakages.	Replace externally if breakage occurs due to vandalism.
9. Vandalism	No external responsibility.	Removal of graffiti from external areas and other associated grounds work - as determined by Council.
10. Keys, Locks	Responsible for keys issued by Council.	Purchase, install and maintain all locks.
12. Training Lights	Total responsibility for purchase, installation, utility costs, repairs and maintenance.	No responsibility.

13. Security System	Purchase, installation, service and maintenance. To be compatible to Council's Master Key System.	No responsibility.
14. Light Globes & Fittings (External)	No responsibility.	For replacement and maintenance when required.
15. Light Globes (Internal)	Replacement	Repair faulty fittings.
16. Plumbing & Fixtures	Cost of internal repairs due to foreseeable misuse, and any add-on fixtures not standard in the building.	Repair and renewal of all plumbing fixtures.
17. Plumbing waste pipes & drains.	Keep clear of foreign objects, mud etc and clear if blocked by these materials.	General maintenance.
18. Other Permanent Fixtures	Regular cleaning of all fixtures and repair/or replace if due to foreseeable misuse.	No responsibility.
19. Hygiene	To keep all areas in a clean and hygienic state.	No responsibility.
20. Painting	Internal painting if damaged through foreseeable misuse.	Internal and external painting on as needed basis.
21. Roofs	No responsibility.	All maintenance and repair as required.
22. Skylights	No responsibility.	All maintenance and repair as required.
23. Walls	Regular cleaning and repair if damaged through foreseeable misuse of internal walls.	Structural maintenance.
24. Building External	No responsibility	General maintenance.
25. Food Handling areas & equipment	To comply with the relevant Health Acts and maintain such equipment required under the Health Act.	No responsibility.

Please note the following schedule is an example only provided to give users an idea of what an appropriate maintenance schedule may look like. Schedules will vary between Council's and responsibilities of the lessee will vary depending on the type of agreement.

Appendix 3: Example Match Day & Training Session Checklist

MATCH DAY AND TRAINING SESSION CHECKLIST*		
Date.....		
Home Team.....		Away Team.....
Ground Inspected		
	YES	NO
The ground is free from debris (glass, stones, dog droppings, rubbish etc)	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
Sprinkler heads and taps are covered and level with the surrounds	<input type="checkbox"/>	<input type="checkbox"/>
If NO what action was taken?		
.....		
The ground is free from holes or uneven sections that could cause trips or falls	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
Padding on goal posts and/or other relevant structures is adequate	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
The weather conditions are safe for play to commence	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
.....		



	YES	NO
The perimeter fencing & signage is safe and secured	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
The grounds & surfaces are free from other hazards that create dangers for players	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
There are appropriate first aid personnel, equipment & easily accessed telephone and/or other emergency contact options should they be required.	<input type="checkbox"/>	<input type="checkbox"/>
If NO , what action was taken?.....		
.....		
Additional comments regarding ground safety		
.....		
.....		
.....		
Prior to the commencement of play /training, I /we have undertaken the above inspection and agree the playing surface is unsafe /safe for play to commence		
.....	
<i>Name of home team representative</i>	<i>Name of away team representative</i>	
.....	
<i>Signature</i>	<i>Signature</i>	
*This checklist includes guidance notes (see following) for those conducting the inspection.		

Inspection Notes

Debris: Carefully inspect the ground for glass, aluminium cans that have been mown over, rocks, general rubbish, syringes, dog droppings and windrows of mown grass and the like that can cause injuries.

Sprinklers: Recessed sprinkler heads on sports grounds are normally made safe by a cover. Erosion of the surrounds of the sprinkler caused by water pressure can create an uneven surface and in turn a trip hazard. As a test for safety a player should be able to directly place a foot on the top of the sprinkler area whilst running and suffer no disruption to the stride pattern or gait.

Holes and uneven surfaces: Pot holes, divots and depressions are hazards commonly found on sports grounds. They are easily repaired by adding sand or soil which should be tamped to provide a stable surface. Uneven surfaces typically arise through differential wear patterns (eg, goal square) and around cricket pitch areas where loose soil has a different drainage pattern to the adjacent areas creating an uneven or rippled surface. Bare patches of earth with clumped grass or weeds also create uneven surfaces. As a test for safety walking across a suspect area with eyes shut such that it makes a person feel unsure about their footing indicates the area requires repair.

Padding: Padding should be on all upright goal posts or other similar structures requiring padding. Padding should reach to a minimum height of 2.5 m, be a minimum of 35 mm in thickness, be in good condition and be securely and safely fixed to the upright.

Weather conditions: Risks arising from hazardous weather conditions include the prospect of localised lightning, a combination of wind, rain and cold leading to hypothermic conditions or conditions of extreme heat leading to hyperthermia. Where appropriate, the weather situation as it relates to player safety should be monitored in an ongoing manner throughout match day.

Perimeter fencing: Perimeter fencing should be checked for protruding wire, pipes, bolts and loose and damaged signage. The location of signage should also be considered and placed as far from the boundary line as possible. At all times the appropriate safety distance from boundary line to the fence as identified in sporting code safety guidelines (Australian Rules football = 5m, cricket and soccer = 9m back and sides 6m) should be adhered to.

Other hazards: Be mindful at all times of other hazards which may not be obvious but which may affect player safety, for example ice. Common sense should always be used and player safety must be considered first and foremost. When particular hazards cannot be eliminated consideration should be given to ensuring they form an Out of Bounds area where no play is possible.

Note: This Checklist has been adapted from information provided by Ballarat University and accessed via the Department of Planning and Community Development website at:

[www.sport.vic.gov.au/web9/rwpgslib.nsf/GraphicFiles/Match+Day+and+Training+Form+2007/\\$file/Match+Day+and+Training+Form.doc](http://www.sport.vic.gov.au/web9/rwpgslib.nsf/GraphicFiles/Match+Day+and+Training+Form+2007/$file/Match+Day+and+Training+Form.doc)

Appendix 4: Example Sports Ground Inspection Form

Ground Being Inspected.....

Date of Inspection

.....

OBSERVATION FOCUS: SURFACE EVENESS

OBSERVATIONS	Does differential height between bare areas and surrounding grass create potential stability or trip hazards?	Yes / No
	Are there holes, undulations, worn areas and sprinkler areas that might cause players to trip, or fall?	Yes / No
	Are there variations between the cricket wicket area and surrounds?	Yes / No
ANALYSIS	Any YES response to the above observations indicates a potential hazard.	Not significant
	Review your responses and indicate how significant this aspect of the ground safety is. Remember that aspects of ground safety can be less than ideal, but still safe for play.	Significant
DECISION	In terms of overall ground surface safety, the evenness of the field is such that conditions for players and officials is considered to be:	Safe
		Unsafe

OBSERVATION FOCUS: GRASS COVER

OBSERVATIONS	The percentage of grass cover is estimated at	<25%
		<50%
		<75%
		>75%
	Does the percentage of grass cover under 50% present a hazard to players and officials?	Yes/ No
	Are there weeds, tussocks or bare patches that could cause stability problems for players?	Yes / No
	Does the grass length, or variations in length, create a potential hazard?	Yes / No

ANALYSIS	Any YES response to the above observations indicates a potential hazard.	Not significant
	Review your responses and indicate how significant this aspect of the ground is. Remember that aspects of ground safety can be less than ideal, but still safe for play.	Significant
DECISION	In terms of ground surfaces safety the grass cover of the field is such that conditions for players and officials is considered to be:	Safe Unsafe

OBSERVATION FOCUS: SHOCK ABSORBENCY

OBSERVATIONS	Are the ground conditions in terms of softness, firmness and hardness an issue for player safety?	Yes/ No
	Is this condition uniform over all the ground?	Yes / No
	Are there cracks in the sports ground surface?	Yes / No
ANALYSIS	Any YES response to the above observations indicates a potential hazard.	Not significant
	Review your responses and indicate how significant this aspect of the ground condition is. Remember that aspects of ground safety can be less than ideal, but still safe for play.	Significant
DECISION	In terms of ground surfaces safety the shock absorbency of the field is such that conditions for players and officials is considered to be:	Safe Unsafe

OBSERVATION FOCUS: GRIP

OBSERVATIONS	Are there sections of the ground with different surface characteristics (bare patches, sandy sections)?	Yes / No
	Is travelling from grassed to ungrassed sections likely to cause slipping, grip or tip hazards?	Yes / No
ANALYSIS	Any YES response to the above observations indicates a potential hazard.	Not significant
	Review your responses and indicate how significant this aspect of the ground is. Remember that aspects of ground safety can be less than ideal, but still safe for play.	Significant
DECISION	In terms of ground surfaces safety the grip of the field is such that conditions for players and officials is considered to be:	Safe
		Unsafe

OTHER HAZARDS

OBSERVATIONS	The ground is free from debris (glass, stones, dog droppings, rubbish etc)	Yes / No
	Sprinkler heads and taps are covered and level with the surrounds?	Yes / No
	The perimeter fencing and signage is safe and secured?	Yes / No
ANALYSIS	Any YES response to the above observations indicates a potential hazard.	Not significant
	Review your responses and indicate how significant this aspect of the ground is. Remember that aspects of ground safety can be less than ideal, but still safe for play.	Significant
DECISION	In terms of ground surfaces safety the hazards on the field are such that conditions for players and officials is considered to be:	Safe
		Unsafe



Ground Profile

Observation Focus	Safe or Unsafe	Remedial action required to enable play
Surface evenness		
Grass cover		
Shock absorbency		
Grip		
Other hazards		

The ground surface at has been reviewed on

Ground Reviewed

Date

By: LGA representative

Home team representative

Away team representative

We agree the ground is currently safe / unsafe for play.

We recommend the following maintenance action on the ground

.....

.....

.....

.....

.....

Signed: LGA representative

Home team representative

Away team representative

Observation notes

Surface evenness: ideally the surface of the sport ground should be level, flat and even. Evenness should be considered at two levels: whole of ground and parts of ground. Uneven surfaces created by bare patches of ground, tufted grass, holes and undulations, a raised cricket table with unstable filling of different composition to the surrounds are potentially hazardous.

Upon careful inspection it should be agreed that overall the ground surface is safe for play. As stated in the match day and training checklist, areas of concern can be tested by walking across them with eyes shut. If this makes a person feel very unsure about their footing, this indicates the area requires repair.

Grass cover: ideally sports grounds should have a consistent 100% grass cover, as bare areas, patchy grass cover, weeds, tussocks and tufts of different grasses create an uneven surface and different traction characteristics as players move from one area to another. Upon careful inspection it should be agreed that overall the level of grass cover is safe for play.

Shock Absorbency: is the extent to which a surface absorbs the impact of a player running on the surface. Sportsgrounds can feel soft, firm or hard. Shock absorbency is influenced by soil moisture, soil type and grass cover. Extremely hard surfaces may lead to soft tissue injuries caused by falling and to joint injuries caused by repetitive compressive forces.

Grip: slip resistance and traction are important characteristics of sports ground surfaces. A player must have enough grip on a surface to accelerate, decelerate and change direction at will. If there is insufficient grip a player may slip which can result in loss of stability and balance and result in ligament and muscle damage. Conversely too much grip can entrap a body part such as a foot whilst other parts move differentially leading to ankle, knee and hip injuries.

Other Hazards: aspects of the Good Practice Match Day and Training Checklist are used here to highlight particular hazards known to increase the likelihood of player injury.

Ground Profile: a ground Profile is produced when the person(s) inspecting the sports ground have to make a judgement whether, overall and on balance, the ground is safe for play. The decisions made for individual ground components are aggregated. For a ground to be considered unsafe for play there must be clear evidence and a strong belief that the likelihood and consequences of the surface conditions creating unreasonable risk for players and officials is evident. We must be able to say that a ground is closed for safety reasons, not aesthetics or horticultural standards. The concept of asset protection may indeed lead to ground closure but this is a separate matter to ground safety and the two should not be considered one and the same.

Note: This Inspection Form has been adapted from information provided by Ballarat University and accessed via the Department of Planning and Community Development website at:

[www.sport.vic.gov.au/web9/rwpgslib.nsf/GraphicFiles/Gound+Inspection+Form/\\$file/Ground+Inspection+Form.doc](http://www.sport.vic.gov.au/web9/rwpgslib.nsf/GraphicFiles/Gound+Inspection+Form/$file/Ground+Inspection+Form.doc)