Review of Australian Sports Insurance

Summary of a report prepared for the Sport and Recreation Ministers' Council (SRMC)

March 2002

Contents

Executive Summary

The Sport and Recreation Ministers' Council (SRMC) comprises the Sport and Recreation Ministers of all Australian Governments.

SRMC is supported by the Standing Committee on Recreation and Sport (SCORS) which comprises the CEOs of government agencies responsible for sport and recreation in all Australian jurisdictions.

SCORS commissioned Rigby Cooke Lawyers to undertake a review of issues associated with insurance for Australian sport and recreation organisations ("**S&ROs**"). The report's authors were Ian Fullagar, Selina Ross and Matthew Finnis. The review was managed on behalf of SCORS by the Australian Sports Commission in conjunction with Sport and Recreation Victoria.

The review was developed in response to increased insurance premiums (particularly in public liability insurance) across the sport and recreation industry and the significant impact this is having on sport and recreation organisations' ongoing operations. The terms of reference for the review are at Appendix 1.

The review considered many investigations conducted by government, industry and academic bodies both throughout Australia and overseas which have examined the nature and scope of the issue and in some cases evaluated the viability of potential solutions.

The review examined the types of liabilities faced by S&ROs in addition to current trends and threats inherent in the purchase of insurance, in order to demonstrate the context in which solutions to insurance problems facing Australian S&ROs need to be considered.

Laws, experiences and strategies pertaining to insurance and the liability of S&ROs in a variety of jurisdictions were described in the report.

A number of actions which might be pursued by S&ROs, industry and government to address the impact of rising insurance premiums on S&ROs are contained throughout the report These actions should be considered either in conjunction with, or independent of, legislative reform.

These options include:

- education of S&ROs in respect of insurance and related matters;
- the development and introduction of formalised risk management;
- increased pooling by S&ROs;
- S&ROs undertaking self-insurance or risk retention;
- the development of sports insurance schemes;
- the development and proper implementation of waivers/indemnities including competition law amendments (Trade Practices Act);
- the introduction of legislation regulating unmeritorious claims;
- the development of standards; and
- the development of special purpose legislation protecting sport and recreation bodies and land managers/owners.

It is clear that legislative reform alone will not provide an effective response to the issue in the short or long terms. Rather, it is incumbent on S&ROs (with support and assistance from

industry and government) to assume some responsibility particularly through adoption of risk management practices and procedures, in order to address the position in which they currently find themselves.

The purpose of this summary of the full review report prepared by Rigby Cooke Lawyers is to inform sport and recreation organisations about the report's directions and to contribute to preparation for the National Summit on public liability insurance to be held on 27 March 2002.

SCORS considered the full report at its meeting on 15 March 2002 and resolved to publish such a summary. The full text of the SCORS resolution is at Appendix 3.

Summary of Research and Key Findings

The following section outlines the review's findings about sport and recreation organisations' activities and needs in relation to liability, insurance and risk management. It includes key findings from a survey of sport organisations and other bodies.

Survey of National and State Sport Organisations and Other Bodies

The consultant surveyed a sample of national and state sport organisations, state sports federations, outdoor recreation operators, sport organisations for people with disabilities, state sport and recreation departments, and brokers and insurers as part of the review. While the sample is not necessarily representative, the survey responses confirmed the issues that led SCORS to commission the review.

Key findings of the survey included ~

Insurer

- 53 per cent of sport organisations that responded have changed insurance companies over the last three years, including 35 per cent who changed as a result of the HIH collapse.

Rates of coverage

- 100 per cent had cover for Public Liability Insurance, with 74 per cent providing cover for their affiliated associations and clubs.
- 97 per cent had Directors and Officers Insurance, with only 44 per cent providing protection to all directors and officers of affiliated associations and/or clubs.
- 81 per cent had Professional Indemnity Insurance.
- 85 per cent covered their members for Personal Accident and Injury Insurance, often funding this through a levy.

National cover

- 63 per cent provided insurance cover on a national basis.
- National cover is perceived to have advantages and disadvantages and is sometimes inhibited by different approaches between state associations.

Importance

- 80 per cent indicated there were major issues facing their sport in relation to insurance.

Risk management

- 63 per cent had some form of risk management plan or policy in place, including 58 per cent who had a formal plan.
- Shortage and turnover of volunteers was the most frequently cited barrier to implementation of risk management plans.
- 60 per cent of outdoor recreation operators that responded indicated they had a risk management plan in place.

- 80 per cent of sport organisations for people with disabilities that responded do not have a risk management plan in place.
- Brokers indicated that persons with disabilities were not considered a higher risk.

Claims and litigation

- 61 per cent of sport organisations that responded have a complete claim history from their insurer.
- 54 per cent were aware of current or pending litigation.
- 83 per cent perceived an increase in the amount of litigation in sport.

Understanding of insurance

- Many organisations have omnibus insurance policies and do not know the cost of individual components.
- Brokers appear to be improperly used or briefed. S&ROs are not aware or not made aware of the range of services that their brokers offer.
- Insurance policies, exclusions, notification and claims procedures, and costs for the various forms of cover under combined policies are often not clear enough.

Current Investigations

There are many current investigations into insurance-related matters being undertaken by a number of State Governments and sporting organisations. A more coordinated and consolidated approach to determining and implementing action to redress the issues identified is needed.

Sport and Recreation Liability

There are a number of forms of liability which may arise in sport and recreation including:

- Tort (negligence);
- Occupiers Liability;
- Occupational Health and Safety Liability;
- Vicarious Liability;
- Criminal Liability; and
- Common Law Liabilities Regarding Statutory Authorities (responsible for land).

The main defence to a negligence claim as a result of sporting activities is '*volenti non fit injuria*', the voluntary assumption of risk. Australian courts have decided that where there is a voluntary assumption of risk, it will operate to exclude a duty of care. However, specific criteria must be met.

Incorporation provides a degree of protection to organisations but does not protect an individual from liability for their own negligence.

It is clear that S&ROs are subject to potential liabilities as a result of the activities they engage in. By being aware of what these potential liabilities are, engaging in appropriate risk management practices and obtaining appropriate insurance (becoming more difficult), the organisations can go a long way to minimise the risk of such potential liabilities.

In the recent case of *Borland v Makauskas & Anor*, the court acknowledged that where a duty of care exists, the duty owed is to avoid foreseeable risks. The court also, however, placed greater emphasis on requiring persons to be more responsible for their own conduct.

In this case a young man was rendered a tetriplegic as a result of injuries he sustained when diving from a fence on a friend's property into a canal. According to the appeal court, "*to have required the appellants to erect a warning sign or to alter the construction of the fence would have been neither reasonable nor just*".

Although the initial court decision supported the claimant, the appeal court considered that the risk of injury suffered by the plaintiff only existed in circumstances of someone ignoring the obvious, and that the young man's conduct was foolhardy in the extreme. This decision demonstrates an admirable common sense approach to liability issues by the courts according to which the duty of care involves a duty to take reasonable care, not a duty to prevent any and all reasonably foreseeable injuries. This is a distinction which would be heartening to administrators of S&ROs throughout Australia.

The potential liability of S&ROs (and indeed public authorities) for injuries or damages suffered in connection with their activities has a direct impact upon the availability and cost of insurance.

There are strong public policy arguments in favour of promoting the provision of sport and recreation opportunities to Australians. These must be given significant weight in considering the impact of judicial decisions about the liability of S&ROs. This would help sustain the incentive for S&ROs to conduct events and participation programs.

Like public land owners, S&ROs have limited funds to spread across many functions and, although they are not conducting activities pursuant to a statutory authority, as not-for-profit organisations they, too, have limited resources. This should be taken into account in determining their level of liability.

Insurance

It is essential that S&ROs protect themselves with adequate and appropriate insurance. Insurance should cover the activities, operators and members of the organisation as well as its property. The nature of insurance cover will depend on the contract of insurance taken out with the insurer, but may include the following types of policies:

- public liability insurance;
- professional indemnity insurance;
- directors and officers liability insurance;
- personal accident insurance;
- occupational health and safety;
- worker's compensation;
- property contents insurance;
- fidelity insurance;
- building insurance;
- travel insurance; and
- event liability insurance; and
- contingency insurance (eg weather).

Three types of insurance are considered essential for sport and recreation organisations, as a minimum:

- Public Liability Insurance;
- Professional Indemnity Insurance; and
- Directors and Officers Liability Insurance.

Rising Costs of Insurance

Although there appears to have been an increase in the cost of most types of insurance, the most problematic and significant is the increased costs of PLI cover. In the survey undertaken, 62% of respondents reported an increase in the cost of their PLI cover over the last three years, while no respondent had experienced a decrease in the cost of their PLI cover even where the extent of their cover had decreased. In fact respondents who had decreased the extent of their cover still incurred an increase in the cost of their insurance.

The impact of increases in insurance premiums has received widespread publicity, particularly in the wake of the cancellation of a number of popular sporting events, and the closing down of many outdoor recreation operators.

PLI premiums have risen across the board for many industries in recent times, however it may be the case that by virtue of the nature of their structure, management and activities, S&ROs are disproportionately affected by increases in the cost of PLI cover. It is clear that many sport and recreation activities are regarded as high risk and attract a larger premium to compensate for that risk factor. S&ROs and their activities are high risk but their structures and activities have added to the risk. The tiered structure of national sporting bodies has, in many cases, resulted in duplication and improper allocation of resources, poor governance and often under-resourced management.

Insurers and brokers considered that the whole rationale or modus operandi of not-for-profit S&ROs are one of the causes of the increases in insurance costs. The volunteer basis of sport and recreation, its key strength, is also proving to be a weakness in terms of the conduct and management of the organisation's activities.

However, the rise in PLI premiums faced by S&ROs cannot be considered in isolation from the factors which are impacting upon the costs of insurance throughout society.

Factors which have been commonly identified as influencing insurance premiums for S&ROs include:

- the financial position of insurers (profitability);
- international insurance trends and extraordinary events;
- increased claims against insurance policies;
- increased litigation; and
- inadequate risk management by S&ROs.

The increase in premiums due to claims comes about through several factors. Increases in the frequency of claims notification has had a high impact on insurers. Whilst the average size of claims settled has dropped in recent years the frequency of claims has risen enormously. But this is not the major reason for premium increases. The cost of investigating each claim

notification and the cost of employing more staff to handle these operations has meant increases in premiums are inevitable.

According to the Insurance Council of Australia (ICA), when an insurer is unsuccessful in contesting a claim, legal costs are borne mainly by the insurer. Even when the insurer wins a case and can claim costs, recovery from the plaintiff is not always possible. Initial research undertaken by the insurance industry suggests the legal costs in liability cases are equivalent to around 50% of the value of the court award. Ultimately, these costs are reflected in premiums and as such it is the policy-holders who pay these costs.

Unfortunately whilst insurers are discouraged from contesting claims because of the costs involved, the likelihood of the sport and recreation industry developing a line of good precedent decisions supporting organisers of events and activities is reduced. This is not to suggest that insurers should be blamed for settling claims on the basis of commercial rather than legal justifications. The result however is that potential plaintiffs will ultimately not be dissuaded from lodging their claim, however unmeritorious it may be. To establish a line of precedents it may be appropriate for S&ROs to again retain some risk and to fight claims within that risk level to develop a line of defensive precedents.

It is notable that cover for S&ROs' events and activities is now unlikely to be included by insurers in broader, non-sporting insurance policies. Insurers have developed a clearer understanding of the risks associated with the sport and recreation industry, and have responded with specific sport and recreation insurance policies which, although more tailored, are often also more expensive. It would appear that S&ROs have yet to identify and implement specific risk management activities for the risks in their events and activities.

Risk Management

Risks are inherent in sport and recreation. Even the safest programs can never avoid accidents and injuries. The fact that an injury occurs however does not mean that someone is liable.

The law does expect, however, that sports administrators develop risk management and loss control programs to ensure a safe environment for all who participate in the sport or recreation activity under their control. Further, the increased cost of insurance means the adoption of sound risk management is becoming more and more important (indeed essential) for S&ROs.

In its *Discussion Paper on Public Liability Cover*, the Tasmanian Department of Treasury and Finance reported that community-based and not-for-profit organisations, particularly those organising community festivals and special events, (which include some sport and recreation bodies) could expect greater increases in public liability cover because:

- such organisations are often run by voluntary committees;
- the members of organising committees, especially those organising community festivals and special events, may have little or no direct experience in activities undertaken by such organisations; and
- the activities of such organisations often involve a large number of people grouped together in relatively small spaces and temporary structures.

These factors increase the likelihood that a significant incident will occur.

If the above is correct, and to the extent that it applies to S&ROs, it follows that S&ROs, more than other industry organisations, have a demonstrated need to implement formal risk management plans.

Whilst a majority of survey respondents reported having a formal risk management plan in place there is a real concern amongst S&ROs and insurers alike, that risk management principles and policies of NSOs and SSAs are not always being properly implemented, particularly at the grass roots level. Obviously this is of considerable concern when the majority of insurance claims arise from this level of sports participation and involvement.

Over 80% of respondents considered that it was reasonable to expect volunteers to understand and implement risk management programs for their activities, however it is volunteer time and expectations that rated as the greatest perceived barrier to the implementation of risk management programs.

Clearly if S&ROs are going to improve their risk management performance they will require support in the development of frameworks and systems which promote compliance at the grass roots level.

Importantly, over 50% of respondents which had a risk management plan in place reported that the existence of the plan has had a positive effect on the price of insurance premiums offered to the organisation. Successful risk management plans result in fewer injuries and hence decreased claims against a sporting organisation's insurance policy. Whilst the results may not occur immediately, sporting organisations can take heart in the fact that the time, effort and funds required to implement risk management programs are being rewarded in premium costs in future years.

Conversely, sporting organisations which do not take steps to improve their risk management practices will be in no position to combat the forces outlined above which are combining to increase the cost of insurance throughout the sport and recreation sector.

It is considered that the DSRNSW's requirement that SSA applicants for funding under its Sport Development program provide details of their Risk Management Plan (if any) is a positive example of the role that Government can play in promoting systematic risk management by S&ROs.

Standards Australia, with the endorsement of SCORS has developed a National Risk Management Guideline for sport with reference to the Australian Standard on Risk Management AS/NZS 4360/1999. This will be available in June 2002.

Options for Consideration

The following section summarises options identified by the consultants for action to address the current difficulties with insurance. Some are legislation-based while a number are not.

Education for Sport and Recreation Organisations in Respect of Insurance

It has become apparent throughout consultations with insurers, brokers and S&ROs that there is a deficiency in the understanding of insurance principles and operations amongst sport and recreation administrators at a number of levels throughout Australia.

The implementation of a systematic education program developed specifically for sport and recreation industry administrators may provide a cost-effective means of overcoming this deficiency and ensuring that administrators are equipped with the knowledge and understanding to confidently tackle insurance issues as they arise in their own organisations.

Government sport and recreation agencies have key role to play in facilitating such an education program.

Whilst education could be limited to specifically focus on insurance-related issues, it has been suggested that more formalised education and accreditation of professional and volunteer sporting administrators (particularly in risk management) is required in order to raise the bar in management throughout the industry.

It is not submitted that such education will have a direct impact upon reducing insurance premiums faced by industry organisations. However, such an initiative would be likely to assist organisations understand and manage the issues involved in a more sophisticated fashion.

Formalised Risk Management

S&ROs have a demonstrated need to implement formal risk management plans to attempt to counter the likelihoood of incidents occurring during their activities.

Risk management needs to be developed and implemented on a systemic basis from national level through to grass roots. Such a system must be readily understood and accessible by volunteers at all levels, and it is incumbent upon national and state S&ROs to take a leadership role here to assist.

Government sport and recreation agencies have a key role in introducing a formalised risk management system for sport and recreation.

The introduction of formal risk management requirements would be supported by a published Risk Management Standard for S&ROs which will be available in June 2002, and specifically tailored risk management resources.

A coordinated approach to the development and implementation of risk management plans throughout varying levels of sporting organisations could be achieved by the recognition of the risk management standard, resources and training competencies by all Governments.

Existing risk management manuals and resources developed by State Government departments will be useful in developing a unified standard approach.

Insurers and brokers consulted by the authors of this Report have indicated support for such an initiative. The contribution and "buy-in" to a national formal risk management scheme for S&ROs of experienced insurers and brokers would potentially result in the system being recognised by insurers in the processing of claims and calculation of insurance premiums for participating organisations.

Formal education for sport and recreation administrators (professional and volunteer) might be implemented in conjunction with the implementation of formal risk management requirements being placed upon funded S&ROs by State and Federal Government funding agencies.

Increased Pooling of Insurance by Sport and Recreation Organisations

Pooling is a process whereby a group of organisations form together to obtain efficiencies in pricing. The main benefits in pooling are achieved through greater buying power and administrative efficiencies. Small organisations might obtain great benefits from such arrangements because when operating separately they will be unable to commit the same level of managerial skills as would be available in a pooled arrangement.

Most local councils participate in pooling arrangements with other member councils in their State. Pooling is generally hosted by the relevant local government association.

The success of pooling arrangements is dependant on having a sufficient number of members which are financial enough to sustain any claims made.

The Municipal Association of Victoria currently has a pooling arrangement administered by Jardine Lloyd Thompson. At the Victorian public liability stakeholder forums, it was proposed that there is an opportunity for community groups and non-for-profit organisations to attach to these existing pooling arrangements. The Municipal Association of Victoria, Our Community Pty Ltd and Jardine Lloyd Thompson are continuing to progress the development of a pooled insurance product ("the Australian Community Groups Insurance Scheme").

A number of NSOs have implemented pooling arrangements to cover their members. It would be preferable if all sports arranged uniform national cover, particularly for public liability insurance.

78% of respondents indicated support for pooling of insurance with other sports of a similar size and structure. The cost of premiums, adequacy of cover and claims history of other sports were considered to be the most important factors to be considered if pooling arrangements were to be pursued.

At least one such NSO has also recently brought into its insurance pool another NSO, which itself had finally pooled all its SSAs into a national pool. This pooling has resulted in further premium reductions, particularly for the second NSO joining the scheme.

Greater pooling within sport could be facilitated by a uniform approach at national level to develop a mechanism to assist S&ROs establish pooling arrangements.

Self insurance and Risk Retention

As a result of increasing insurance premiums, a lack of accessibility to suitable cover and a need to take tighter control of claims handling, many organisations are looking for alternative means to manage the risks in their operations.

Self-insurance is where an organisation opts to retain part of the risk and finance any losses resulting from that risk itself, rather than transferring the risk to the insurer. A system of self insurance might operate by the S&RO retaining the risk for claims up to an amount equal to the premium, (so a premium of $500,000 would mean self insuring up to this amount) and transferring the risk over this amount by obtaining insurance above this level. The percentage of risk to be retained should be determined after consideration of a number of factors including the ability to fund losses and the past claims history of participants.

Retention of risk can provide the S&RO with greater control over the claims process, allowing it to assess which claims should be granted and which should be contested. The S&RO will also be able to control any legal proceedings which may be instituted against it and therefore would be in a position to develop a line of precedents supporting the rules, policies and priorities of the S&RO.

Although at least one NSO in Australia is actively pursuing a risk retention approach to liability insurance, there are many S&ROs which would be unable to adopt such an approach in isolation, given their resources and capacity to manage such a scheme. However a risk retention approach may be achievable where a pooling arrangement has been established comprising a number of S&ROs.

Sports Insurance Schemes

An option to consider is the establishment of an industry specific insurance scheme. Below are two options for sport industry insurance schemes, one of which would be government-based and the other private.

Government Based Scheme

In its *Discussion Paper on Public Liability Cover*, the Tasmanian Department of Finance and Treasury addressed the possibility of introducing a Government based fund to provide insurance cover specifically for S&ROs. It was considered that such a scheme may be effective in reducing the cost of insurance to such organisations because there would be no mark up on premiums which are required by insurers to reach profit margins.

Two options were proposed to facilitate such a scheme:

- the establishment of an administrative arrangement for the express purpose of providing cover and administering the resultant claims; or
- the expansion of existing arrangements under the Tasmanian Risk Management Fund which provides cover to inner-budget sector agencies.

The perceived benefit of such a scheme would be a reduction in the costs of premiums. However, the Department expressed a concern that such a scheme might create a dangerous

precedent from a public policy perspective by establishing competition with the private sector. The Department also noted several other disadvantages with the proposed scheme, including:

- significant costs required to facilitate the arrangement;
- the Government's risk exposure that claims costs may exceed premium income;
- uncertainty of the number of organisations which would be willing to participate resulting in a difficulty in establishing premiums;
- a necessity for Government to purchase re-insurance, the cost for which would need to be passed onto participating organisations;
- the possibility that the cost of cover in the private sector may decrease over time which may induce organisations away from the Government scheme and leave the Government with a possible claims liability with no reserves.

An alternative to the Government provided scheme would be a Government subsidy to assist the purchase of PLI from the private sector. Under this option, eligibility criteria would be established and eligible organisations would receive a subsidy to be paid toward private public liability insurance cover. This option would provide a beneficial short term option for not-for-profit organisations, however the Department was again mindful of the precedent this would establish and noted other disadvantages which would include:

- costs associated with such an arrangement;
- reallocation of funds from other activities;
- difficulty in determining guidelines for eligibility; and
- such Government assistance will not alter what is happening in the market place with the cost of insurance.

Although the Tasmanian Government's report considered that a Government funded insurance scheme might not be the answer from a public policy perspective in that it would be competing with the private sector, it must be remembered that:

- sport and recreation receives considerable public funding and this investment should be protected;
- Recognised S&ROs are not typical for-profit businesses and they do not operated in a traditional marketplace in that they really do not have competitors in an economic sense; and
- The public benefit (from health and community perspectives) from participation in sport and recreation activities is considerable.

In 1978, the New South Wales Parliament passed the *Sporting Injuries Insurance Act 1978 (NSW)* ("SIIA") to provide insurance cover for injury and illness of sporting participants in certain circumstances. This position differs to any other state or territory of Australia.

Private Sports Insurance Schemes

A private sports accident insurance scheme operates in British Columbia, Canada called the "All Sport Insurance Program." This scheme is available for amateur sports and is considered to be partly responsible for containing the overall cost of insurance for sport organisations because it provides individual cover for participants at a reasonable cost. Under this scheme, lost income is not covered but periodic disability benefits discourage litigation over less serious injuries.

The scheme provides liability insurance (in the form of General Liability Insurance, Directors and Officers Insurance, and Sport Accident Insurance) for all members of an organisation, including executives, managers, coaches, trainers, officials, employees and volunteers whilst acting within the scope of their duties.

Waivers/Indemnities including Competition Law Amendments (Trade Practices Act)

Participants in sport and recreation should share responsibility for the risks involved in an activity and should assume responsibility for any problems caused by their participation if such behaviour lies outside the terms and conditions of participation and the rules of the game. With the control of inherent risks in sport being a priority, it is important to avoid as much unnecessary risk as possible and transfer those responsibilities that can or should be assumed by others.

S&ROs use releases, waivers and exclusion clauses to document the fact that participation is voluntary, that the risks involved are acknowledged and assumed, and that the intent is to release the S&RO from responsibility for any injury that may occur for the privilege of being allowed to participate. This document is called a "waiver" because it requires the participant to agree to waive his or her rights to sue should an injury occur while participating. It is also called a "release" because the basic agreement is to release the organisation from liability for any injury experienced while participating.

Such documents and clauses have been reviewed considerably over time by courts. Some liabilities cannot be excluded. For example, the *Trade Practices Act 1974 (Cth)* prohibits the exclusion of some terms which it includes in all consumer contracts for consumer protection. The courts' treatment of such documents and clauses varies widely, resulting from the combined effect of the quality of the document, the circumstances of the matter and the judge. However, a well drafted release clause reduces the number and type of disagreements that might be experienced.

In some circumstances the insurer may require that a release be signed by participants and officials of the insured when participating in events.

Whether or not the acceptability of a release is an underwriting requirement for purchasing PLI (which requirement is increasing), the insured should use one which presents the least possibility of being dismissed from consideration due to foreseeable error. Of principal importance is (a) that a good release has value for the defence of an action regardless of the claim; and (b) the insured should never rely on it in lieu of other relevant loss control and risk management procedures.

There are a number of detailed technical requirements that must be met to ensure the effectiveness of such documents.

Education on use of such documents would assist S&ROs.

Trade Practices Act 1974 (Cth)

Division 2 of Part V of the *Trade Practices Act 1974 (Cth)* creates a number of conditions and warranties that are implied into all contracts for the supply of goods or services by a corporation to a consumer.

Section 68A of the Trade Practices Act provides for liability to be limited in circumstances where the goods or services supplied are not of a personal, domestic or household nature, and the condition or warranty relates to supplying the services again or paying the cost of having the service supplied again. The effect of these provisions is that a release, waiver or indemnity clause in a contract which would remove liability for certain negligent conduct would be rendered void, such that a party to a contract who has received a release, waiver or indemnity in relation to certain liability will not be able to rely on that provision and will be regarded as liable. This generally means that such clauses have no effect to contracts which are subject to the *Trade Practices Act 1974 (Cth).*

In Canada, the law allows parties to enter into a contract to exclude liability. Such a contract, usually called a 'waiver' or 'legal release', must exist before an insurer will provide insurance cover. In some cases the contract can exclude liability for negligence if the customer fully understands the risks and accepts them.

There have been recent Australian cases which evidence the problems with the *Trade Practices Act 1974 (Cth).* One case involved a sky diving student who was injured during a jump and brought a claim in negligence, contract, misleading and deceptive conduct and unconscionable conduct against the sky diving provider.

The plaintiff submitted that a statement made by the pilot that she was safe to jump in the current wind conditions because the instructor on the ground had not radioed to advise otherwise was misleading. It was argued that it was unreasonable for the pilot to have made the statement because he was aware the radio could fail. The sky diving centre argued that the student had signed a membership/indemnity form and accordingly had consented to the risks involved in jumping and it was therefore absolved from all liability. The student argued that by signing the membership indemnity form she had consented to the general risks but did not consent and indemnify against the specific risk that had occurred.

The court found that the indemnity clauses were effective to afford complete indemnity, however the indemnity clause could not protect against statutory liability (implied conditions in respect of the service provided) imposed by the *Trade Practices Act 1974 (Cth).* As a result of the *Trade Practices Act (Cth)* the indemnity which was regarded by the court as effective, was rendered useless and the plaintiff was awarded $1,086,798.38 in damages.

In the sport and recreation context a contract containing a release, waiver or indemnity would most likely be regarded as being a contract for personal or domestic use. Therefore *the Trade Practices Act 1974 (Cth)* would need to be amended to exclude sport or recreation services from the definition of personal, domestic or household use in section 68A.

In addition, the situations where liability can be limited would be required to be extended into circumstances involving such organisations. This would be required to enable these organisations to limit their liability in relation to warranties as to the provision of due care and skill.

The Introduction of Legislation Regulating Unmeritorious Claims

It is perceived that Australia is becoming a more litigious society. One of the alleged reasons for this is greater access to the judicial system through conditional fee arrangements offered by lawyers. In addition, there are concerns about lawyers who encourage litigation which is not meritorious. Currently there is little to deter lawyers from embarking on a campaign to encourage their clients to commence litigation where the chances of success are unknown, minimal or unlikely.

This has been considered an issue in relation to claims by employees for unfair termination such that the *Workplace Relations Act 1996 (Cth)* was recently amended by the *Workplace Relations Amendment (Termination of Employment) Act 2001 (Cth).* The amending Act imposes penalties on 'advisers'that encourage an employee to make or defend an unfair termination application in circumstances where it is "*reasonably apparent to the adviser that there was no reasonable prospect of success in the application" or "no reasonable prospect of the Respondent defending the action*".

The Act also gives the Australian Industrial Relations Commission ("**AIRC**") the discretion to require an applicant to provide security for costs and allow the AIRC to make enquiries into whether the legal practitioners are engaged on a costs or contingency basis and broaden the scope for the AIRC to make a costs order.

Similarly, one of the recommendations contributed by Sportscover was the introduction of legislation to allow sporting clubs and associations to recover all costs of administering a claim against the person making an unsuccessful claim, and further, recovery from the professional advisers to the claimant if the claimant is unable to pay.

Recovery of costs against unsuccessful claimants would clearly be beneficial to sport. This could be achieved through changes to legislation and/or inclusion of relevant clauses in membership contracts.

Standards

A Standard is a published document which sets out specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs the way it was intended to.

Standards are vehicles of communication for producers and users. They establish a common language, which defines quality and establishes safety criteria. Costs are lower if procedures are standardised and training is also simplified. Further, consumers accept products more readily when they can be judged on intrinsic merit.

Standards are not legal documents although some are called up in Federal or State legislation, however most are used voluntarily where they are applicable to a particular industry.

The Outdoor Recreation Centre in Victoria recently undertook a pilot project into the development of "Minimum Activity Standards for Outdoor Recreation Activities in Victoria". The intention is to develop industry endorsed standards to be adopted by organisations conducting outdoor recreation activities. It is proposed that the standards will be comprised of the following groupings:

- activity description;
- knowledge of group and physical environment;
- core responsibilities, skills and experience of leader, staff and group;
- planning and preparation;
- leader - staff participation ratios;
- specific equipment required;
- emergency procedures; and
- it is also proposed that a risk management tool be incorporated into the Standard.

It is intended that the development of such Standards will enhance the safety of outdoor recreation participants and assist in the growth and sustainability of the industry. They are intended to provide a benchmark to assess risk and the quality of a program, which is intended to also assist insurers in ascertaining the real risk of an activity upon which to base premiums. Industry associations have indicated support and a willingness to adopt any Standards developed.

The Development of Special Purpose Legislation Protecting Volunteers, Sport and Recreation Bodies and Land Owners and Managers

Volunteers

Volunteers are integral to any sporting organisation. One of the problems with volunteering, however, is the potential liability faced by volunteers who are subject to potential claims for negligence, as are the organisations for whom they provide their services. It is this potential liability that is forcing many volunteers to reconsider whether they will continue to offer to volunteer their time.

Throughout the USA legislation has been enacted on both a Federal and State level to provide protection to volunteers from potential liability arising from the provision of their services as a volunteer. Only recently in Australia has any such legislation been introduced.

In South Australia the *Volunteer Protection Act 2001 (SA)* was introduced to protect volunteers from being personally liable to pay compensation to third parties for negligent actions arising out of authorised activities of the volunteer which may have unintentionally caused personal injury, property damage or financial loss. The Act is based on the *Volunteer Protection Act 1997 (USA).*

hrough the introduction of the Act, the South Australian Parliament sought to achieve a:

"*reasonable and expedient balance between the need to protect volunteers against personal liability and the interest of those who suffer injury, loss or damage*."

The intent of the Act is to limit personal liability of volunteers by transfering the potential liability of the volunteer to the organisation for which the volunteer is acting. The transfer of such civil liability to the organisation is based upon the same principles as the doctrine of vicarious liability which transfers the liability of an employee's actions to the employer. However, this piece of volunteer protection legislation goes further because the doctrine of vicarious liability provides an indemnity whereas this legislation provides an immunity from civil action to the volunteer.

There are specific exemptions where immunity will not be extended. These include:

- liability for defamation; and
- liability arising from work done whereby the volunteer was impaired by recreational drug use.

Further the immunity will not operate if the volunteer was acting outside the scope of their authorised activities or contrary to instructions.

An Act such as this benefits volunteers and would reinforce their vital place in Australian sport, however, it subjects the organisation to the risks of liability for the acts of the volunteer. As such, whilst the legislation may assist in recruiting and retaining volunteers who were otherwise reluctant to volunteer for fear of potential liabilities, it will not have any effect on reducing insurance premiums.

There may be potential for legislation that protects not only volunteers, but organisations themselves, from liability for minor claims provided certain safeguards were in place. In the interests of consistency it would be preferable to enact such legislation on national basis.

Sport and Recreation Bodies and Land Owners and Managers

There are precedents for legislation to protect both organisations conducting activities and land owners and managers from liability (provided designated standards are met), which could have direct and flow-on benefits for S&ROs.

Certain legislative provisions exist in relation to limiting the liability of statutory authorities which could be modified and applied to particular public bodies which have a legislative requirement to conduct certain activities or have certain lands subject to their control.

Good Faith Immunity

A report was published at the end of 2000 by the NSW Parliamentary Public Bodies Review Committee on "*Public Liability Issues Facing Local Councils*". The report was initiated as a result of concerns regarding the level of public liability exposure for councils resulting from the variety of services and facilities offered to the community. The Committee considered the tension between the rights of an injured person to seek compensation and the expenditure of public money on litigation to defend claims for compensation.

Certain legislative provisions exist in relation to limiting the liability of statutory authorities which could be modified and applied to particular public bodies which have a legislative requirement to conduct certain activities or have certain lands subject to their control.

The Committee considered options of capping claims for major injuries and disabilities. However, it was considered that such measures would unfairly disadvantage severely injured plaintiffs. The Committee was of the opinion that councils would benefit greatly from gaining relief from liability in the area where they receive the most claims, those being trips and falls on footpaths and other council surfaces. Although these claims tend to result in less expensive awards or settlements, the administrative and other costs associated with them are significant.

After consideration of alternatives for relief including no fault liability, capping liability, preliminary negotiation periods, total statutory immunity, agreed best standards, compulsory early notification periods and good faith immunity, it was suggested that a "good faith" defence would provide a balanced approach.

The "good faith" defence would afford immunity provided an effective risk management program with statutorily imposed standards had been implemented. The councils would be required to agree upon best practice standards which would form the basis of a legislative defence of "good faith".

Such good faith immunity exists in relation to contaminated and flood prone land in section 733(4) of the *Local Government Act 1993 (NSW)*. Under this legislation the process is transparent and based on consultation with experts and the community. The standards to be adopted are flexible and periodically reviewed.

Good Faith Immunity for local councils in relation to sport and recreation facilities would alleviate pressure for local councils to impose greater demands on sport in relation to insurance.

Clearly a good faith immunity of the type proposed above, could be beneficial if applied to S&ROs and other not-for-profit organisations. It would not, however, be 'as of right' immunity. Safeguards could include the organisation:

- carrying some insurance to a specified level;
- appropriate indemnities in the organisation's rules;
- an effective risk management plan being implemented and in place with best practice standards;
- appropriate training for volunteers; and
- being affiliated to the relevant international sporting body, NSO or SSA.

With immunity from minor claims, S&ROs could focus their insurance needs on more serious claims.

Other possible provisions

There are a number of other possible provisions that can protect land owners and managers including, some of which are in place in parts of the US:

- the nonfeasance principle, a rule of law that provides an authority with immunity from liability for failure to repair where a condition of disrepair exists through no fault of the authority
- immunities for local councils in relation to hazardous recreational activities, such as skateboarding, surfing, tree climbing, water skiing, whitewater rafting and rock climbing and injuries that occur in natural environments (California).
    - This scheme however encourages councils to ignore dangers even where they are obvious, as any attempt to remove the danger will increase the possible risk of liability
- recreational user provisions which provide that no duty of care is owed to keep the premises safe for entry or use for recreational purposes or to provide warning of dangerous conditions (except where an entry fee is paid or there is a wilful or malicious failure to warn against a dangerous condition)(most US states)
- Unimproved condition provisions which protect State land managers against liability in cases of accidents arising from the unimproved conditions of the land. (Some American States)
    - This legislation is based on the type of land upon which the activity is conducted, however legislation which also considers the nature of the activity involved might result in broader application beyond the sphere of public land ownership.

Further consideration of these provisions would enable a judgement to be made about the impact of legislation of this kind on S&ROs, and other relevant considerations.

As suggested above immunity for land owners might alleviate pressure for land owners to impose greater demands on S&ROs in relation to insurance.

Tort Reform

In New Zealand, common law tort recovery has been abolished and the right to sue for damages for personal injury caused by accident is provided by a comprehensive statutory scheme, the Accident Compensation Scheme. This includes accidents resulting from sport or leisure activities.

Cover under the scheme is compulsory and most victims of personal injury are confined to seeking only that compensation which may be obtained under the scheme, except for exemplary damages which may be sought under common law. The scheme has been the subject of considerable criticism, however New Zealand Government consultation has rejected a return to the traditional tort system.

Under the Scheme the Accident Compensation Commission (ACC) promotes safety in sport and recreation. The ACC advocates that one of its major goals is to reduce the number and severity of injuries. Sport and recreation entitlement claims are estimated to cost on average $90 million a year. In an attempt to address safety in sport the ACC has developed "ACC SportSmart", a generic plan to assist in sports injury prevention which can be applied to all sports and recreational activities.

In the USA a number of tort reforms have been introduced including measures in relation to:

- collateral source rules;
- caps on damages;
- contingency fees;
- joint and several liability;
- non-economic damages;
- prejudgement interest;
- product liability defences;
- punitive damages;
- statute of repose; and
- structured settlements.

Effectiveness of Tort Reform

Many American States have been proactive in implementing tort reform legislation since the 1980s. A study was recently conducted to determine the effect of tort reform on liability insurance rates. The study assessed the impact of tort reform on the cost of liability insurance during the period 1985 to 1998. By 1986, 41 US States had introduced tort reforms.

It was reported that the only people who benefit from caps on damages awards and other legislative reform are the insurers and corporations. The report made the following findings:

- the enactment of tort reform limits has not succeeded in reducing insurance premiums;
- States which have not enacted any tort reform have experienced only low increases in insurance costs compared to the national trend. Other States which have enacted tort reform have seen high increases in insurance costs.

Appendix 1 - Terms of Reference

The Terms of Reference set by the Standing Committee on Recreation and Sport (SCORS) for the review of sport insurance are as follows:

1. To highlight current and developing factors, trends and threats, in terms of:
   - the need to insure;
   - impacts on the ongoing viability of the sporting organisation; and
   - identifying which areas of risk are most likely to trigger insurance claims.

2. To identify the main factors influencing the rising cost of insurances required by sports organisations, particularly Public Liability, Directors and Officers, accident and injury, and professional indemnity. Variations in costs faced by for-profit and not-for-profit organisations should be considered.

3. To recommend the minimum types and levels of cover appropriate to sports at national, state and club levels according to risk factors and prudent risk management.

4. To identify measures that sports can adopt to educate participants about, and minimise the risks of, claims and cost of premiums.

5. To provide a list of Australian- and overseas-based insurers of Australian sport and, where possible, the range of insurance products, services and schemes that they offer.

6. To propose a minimum risk management strategy for national and state sporting organisations and for sports clubs. This strategy could take the form of a "leading practice" guide to the purchasing of insurance for sporting organisations and individuals.

7. To advise on the practicalities, or necessity, of legislation that restricts the size of claims made under sports insurance policies, including how this operates in other industries.

8. To prepare an appropriate advisory paper for the information of national and state sporting organisations.

Appendix 2 - Reading Guide

The following list of resources was provided as part of the full review report by Rigby Cooke Lawyers.

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Australian Plaintiff Lawyers Association of Australia http://www.apla.com.au

Australian Prudential Regulation Authority http://www.apra.gov.au

Australian Securities and Investment Commission: http://www.asic.gov.au

Insurance Council of Australia: http://www.ica.com.au

Insurance Exchange Australia: http://www.ieasport.com.au

Law Council of Australia: http://www.lawcouncil.asn.au

National Insurance Brokers of Australia: http://www.niba.com.au

Transport Accident Commission: http://www.tac.vic.gov.au

Victorian Tourism Operators Association http://www.vtoa.asn.au

Victorian WorkCover Authority http://www.workcover.vic.gov.au

Appendix 3 - SCORS Recommendations

The following is a summary list of the recommendations arising from the review.

1. It is recommended that S&ROs only use specialist sports brokers.

2. It is recommended that insurance policies be simplified with the extent of the various covers set out in them. How the policy works and what is excluded needs to be made clear by the insurer or broker. The notification and claims procedures also need to be clearly set out and explained to the S&RO by the insurer or broker. Insurers and brokers should also be able to advise the various premium costs for the various forms of cover under a combined policy.

3. It is recommended that S&ROs encourage and/or require their brokers to provide clear breakdowns of premium against cover for various insurance types.

4. Despite the legal obligations on insurers and brokers, it is recommended that S&ROs question their broker or insurer about the appropriateness of insurance being placed and proactively seek to understand their insurance requirements and be satisfied that the cover being obtained is appropriate.

5. It is recommended that all S&ROs develop a strict system of recording and maintaining their claims history. This includes ensuring the S&ROs broker also keeps a complete claims history for its client.

6. It is recommended that the development of a standard claims register for S&ROs be considered by Government, Sports Federations and the Insurance industry.

7. It is recommended that S&ROs be properly educated on their potential liability in circumstances where they owe a duty of care.

8. It is recommended that S&ROs be better educated on the principles involved in the defence of *volenti non fit injuria* and how it can be best applied in respect of the S&ROs' particular activities so that they will be a in a better position to rely upon this defence if necessary.

9. It is recommended S&ROs be educated and made more familiar with the requirements of insurance and how insurance contracts and policies operate.

10. It is recommended that S&ROs undertake education of the differences between, and the roles, duties, functions and operations of brokers and insurers, and the services they offer. This includes education on the duties owed to them by insurers and brokers and their rights under the *Insurance Contracts Act 1984* (Cth), the *Insurance (Agents and Brokers) Act 1984* (Cth) and under their insurance contracts.

11. It is recommended that a national uniform approach be taken in response to the issues of governance, official education, sport structures, member protection, facilities and insurance.

12. It is recommended that S&ROs receive education on the proper preparation and implementation of relevant waivers, releases and exclusion contracts. Such contractual terms should be introduced on a uniform basis over the whole sport wherever possible to minimise risk and to transfer the risks in the activity or event to the participant. These include event entry forms, membership forms and the constitution of the organisation. S&ROs should inquire of their brokers or insurers whether they have any particular requirements in regard to the use of waivers by the S&RO.

13. It is recommended that S&ROs receive education on risk management procedures to ensure the development and implementation of quality risk management plans and practices.

14. It is recommended that accreditation of S&RO administrators be considered, and if desirable and appropriate, implemented across the sport and recreation industry. Such accreditation and its

recognition might be a prerequisite to protection received under the legislative option proposed at recommendation 24 below.

15. It is recommended that uniform national PLI cover be taken out by S&ROs. Premiums should be divided amongst the clubs and SSAs according to claims history and also the number of participants and/or clubs etc in a particular State.

    NSOs and SSAs must clearly define their respective roles and responsibilities, particularly in relation to insurance and risk management.

    Pooling within these organisations should be pursued as a first step and might then be extended to pooling with other S&ROs where appropriate.

    A unified approach should be taken on a national level to develop a mechanism to assist S&ROs establish pooling arrangements.

16. It is recommended that S&ROs should investigate self insurance and risk retention alternatives. Unless there is considerable pooling (which is recommended in any event) this option will only be available to those S&ROs which can afford to retain and self insure a particular level of risk.

17. It is recommended the S&ROs advise their broker and/or insurer of the existence of their risk management program. Insurers and brokers must play a more active role in S&RO's risk management programs.

18. It is recommended that S&ROs seek clear, definite direction(s) from their brokers and/or insurers in respect of any particular risk management policy or procedure which might assist the S&RO in terms of its insurance obligations. Clearly S&ROs must now factor risk management into all their strategies (financial and sporting), processes and plans.

19. To address the perception that S&ROs are soft targets for liability claims it is recommended that:
    - systematic risk management be established, implemented and delivered through all levels of S&ROs;
    - realistic training in risk management must be provided at all levels of the S&RO and relevant support mechanisms must be developed and put in place;
    - the regulation of participants - be they visitors, spectators, players or officials must be increased with relevant risk identification and warning;
    - the rights and responsibilities of volunteers need to be clearly set out in writing and volunteers made aware of them prior to commencement of the task;
    - S&ROs must be educated to improve their "business" practices.

20. It is recommended that all sport and recreation funding agencies consider introducing risk management as an item to be addressed by S&ROs to ensure they are eligible to receive funding from that agency.

21. It is further recommended that funding agencies support such requirements with systematic education of S&RO administrators to ensure the development and implementation of quality risk management plans and processes.

22. It is recommended that a national, formalised risk management procedure for S&ROs be developed and introduced. This should be the case whether legislative based or not. If legislation of the type proposed below in recommendation 24 is introduced, then compliance with such procedures and/or standards would be part of the requirements for S&ROs to attract the protection provided by the legislation. If legislation is not introduced, a formalised risk management system for sport and recreation must be introduced anyway. This would be regulated by sport and recreation funding agencies but would be a uniform national procedure.

23. It is recommended that the development of particular risk management standards for the Australian sport and recreation industry should be researched and if appropriate undertaken. The current risk management guideline being prepared by SCORS and Standards Australia is an example of where

this might achieve a benefit for S&ROs. However to achieve such benefits more communication is required between State and Federal Governments and also between State Sports Federations and also between NSOs and SSAs both within and between particular sports and recreation activities.

24. It is recommended that Federal legislation be developed which would include:
    - The legislation should establish a minimum level of protection for volunteers of not-for-profit organisations. It would override any existing State legislation to the extent of any inconsistency.
    - The legislation would contain exceptions similar to those under the *Volunteer Protection Act 2001* (SA). As a minimum the volunteer must:
        - act within the scope of his or her responsibility and given instructions;
        - be properly trained and if necessary certified; and
        - not cause the injury by wilful, criminal or reckless misconduct.
    - The legislation should also establish protection for the not-for-profit organisation itself. This would not be as-of-right protection but would necessitate the organisation achieving a certain standard of safeguards (see below).
        - S&ROs would have no liability for minor claims subject to "good faith" requirements being met.
    - The safeguards could include:
        - the organisation carrying some insurance to a specified level;
        - appropriate indemnities in the organisation's rules;
        - an effective risk management plan being implemented and in place with best practice (and possibly imposed by statute) standards;
        - appropriate training for volunteers (including committee members) including statements of responsibilities, etc for positions;
        - all other requirements to achieve funding being met;
        - the S&RO being (1) affiliated to the relevant international body (if an NSO) and to the relevant NSO (if a SSA) and to the relevant SSA (if a club) and (2) recognised by the relevant level of government;
    - matters similar to those under the Quebecan *Act Respecting Safety in Sport 1979* (for Sports Federations and other sports bodies);
    - the protection would be open to review annually or such other term as may be prescribed;
    - major injuries and disabilities would be capped under a scheme similar to the New Zealand *Accident Compensation Scheme 1998* or the *Sporting Injuries Insurance Act 1978* (NSW). Payments of premiums under this scheme would be compulsory for all recognised S&ROs;
    - good samaritan exclusions could also form part of the legislation or could be the subject of separate legislation.

25. It is recommended that all Australian NSOs liaise regularly (if they are not already doing so) with their counterparts in other countries and also their international Federation on insurance issues and possible solutions. Any useful information gained should be forwarded by NSOs to the ASC and SIA for consolidation of approaches to sports insurance.

26. It is recommended that S&ROs be entitled to automatically recover costs against claimants who make claims that are unsuccessful. This could be achieved through amendments to legislation including court procedural rules or by inserting a clause in relevant entry or membership contracts under which a claimant agrees to pay the S&ROs costs if they claim and are unsuccessful.

27. Further investigation is required to determine whether any formal system of accreditation for sports insurers or brokers would address the issues raised.

28. It is recommended that further research be undertaken into current risk management practices, plans, policies and procedures being used by S&ROs. The authors are aware of at least 3 or 4 separate risk management projects being undertaken around the country by various State departments. There appears to be little dialogue or liaison between them.

29. It is recommended that consideration be given to the establishment of a National Risk Management Training Council to coordinate best practice management amongst S&ROs.

30. It is recommended that a full review of the structures of S&ROs be undertaken to consider whether such structures have contributed to insurance cost increases as well as adversely affecting the risk profile of S&ROs.

31. It is recommended that further investigation be made into the viability of a government based sports insurance scheme which would operate on a national basis.

32. It is recommended that there be further investigation into the current regulation of advertising by lawyers and to more strictly regulate "no win-no fee" arrangements.

33. It is recommended that provisions similar to those in the *Workplace Relations Act 1996* (Cth) penalizing lawyers who commence unmeritorious claims or mount unmeritorious defences should also be considered in the context of sporting litigation.

34. It is recommended that consideration be given to establishing a Sports Board similar to that created under the Quebecan *Act Respecting Safety in Sports (1979)*. Such a Board would be a statutory body and could be constituted under the proposed legislation. In addition to having functions similar to those under the Quebecan Act, the Board would also regulate the protection and regulation aspects of the Act.

35. It is recommended that there be further investigation into the possibility of amending the *Trade Practices Act 1974* (Cth) so that it does not apply to restrict waivers, etc from certain contracts. This is particularly so in terms of implied conditions. The effects of these provisions of the *Trade Practices* Act *1974* (Cth) should be able to be excluded by a properly drafted waiver. Sport and recreation activities should be excluded from the operation of sections 68 and 68A of the *Trade Practices Act 1974* (Cth).

36. Further consideration needs to be given to the introduction of legislation which protects land managers and owners and provides that there is no duty of care to keep the premises safe for entry for recreational purposes in circumstances where land managers have met designated standards. Subject to this further consideration, the initial recommendation is that such legislation should be introduced.

37. It is recommended that a working group be established to identify all relevant existing legislation relating to the workplace and how this may be translated to protect the volunteer in his or her "workplace". Findings from such working group would be utilised in the proposed legislation.

38. It is recommended that further research is required to ensure that any proposed legislation complies with any constitutional requirements at both State and Federal level.

39. It is recommended that SCORS, through the ASC, take a leadership role in providing a consolidated and centralised approach to determining the appropriateness and viability of potential solutions to overcome the detrimental impacts of increasing insurance premiums on S&ROs.

Appendix 4 - SCORS Resolution

The Standing Committee on Recreation and Sport (SCORS) met on 15 March 2002 and considered the full review report prepared by the consultant. The Committee passed the following resolution as a result of their consideration of the report.

SCORS:

- Notes the presentation by the consultant.

- Establishes an Insurance Working Group to progress SCORS action on the implementation of the recommendations of the review report.

- Requests the Working Group to coordinate the preparation of a summary of the review report for public release to national and state sport and recreation organisations by 25 March 2002.

- Commence immediately a coordinated response for the implementation of:

    - a comprehensive risk management system to be instituted nationally for the sport and recreation industry
    - a national insurance education program based on the NSW risk management training program (and incorporating an advisory paper for sport and recreation organisations)

  by 30 April 2002.

- Requests the Working Party to develop detailed plans to implement where appropriate the report's recommendations regarding:

    - facilitation of pooling (rec. 15)
    - review of the structures of S&ROs (rec. 30)
    - SCORS leadership (rec. 39)

  by May 2002 for consideration by SCORS and if necessary SRMC out of session

- Agrees that subject to Ministers' approval, each jurisdiction take to the National Summit on public liability insurance on 27 March 2002 key proposals in the report. These include, but are not restricted to, the recommendations relating to:

    - volunteer protection/protection of organisations from liability for minor claims (rec. 24)
    - protection of land managers and owners (rec. 36)
    - amendment of the Trade Practices Act (rec. 35)

- Refers the balance of recommendations and any other relevant insurance issues to the Working Group for further consideration and report back to the next meeting or as appropriate.