
CREATIVE ENTERPRISE HUBS IN AUSTRALIA: LIABILITY + INSURANCE

Introduction

As with any business venture, it is important that you take care to avoid damage or injury to people and property when operating a business. This applies to the **Administering Body** as well as to participants in a Creative Enterprises Hub (**Program Participant**). Most creative activity occurs without incident. However, sometimes you may be responsible for compensating someone for an injury he/she suffered. For example, a volunteer may be injured while working for you, an employee or contractor may be injured while using a piece of your equipment, or a customer could slip and fall in your gallery. A valuable artwork could be stolen from your gallery. Accordingly, anyone involved in Creative Enterprise Hubs should understand the potential liability issues and consider whether it is appropriate to obtain insurance.

What is liability?

Liability is your legal responsibility, duty, or obligation to compensate a person for the harm you have caused by breaching your legal duties to that person:

- **Duty of Care:** the law requires you to take reasonable care to avoid hurting or damaging a person or their property when your actions (or inaction) are likely to affect them.
- **Breach of duty:** if what you do (or fail to do) causes harm to a person whom you owed a duty of care, you may be legally responsible or liable.
- **Consequences:** if a court finds that you have done the wrong thing and are responsible for the harm caused, you may have to pay money to the injured person or for the damaged property. The court will look at what precautions you took to prevent harm to the person to whom you owed a duty of care.

Responsibility of tenants

The owner of a property is ultimately responsible for maintenance of the property. As a tenant or licensee occupying property, for example under a lease for a project space, you may still be responsible for injuries occurring on those premises, including those caused by defects in the property. This is called Occupier's Liability and the general duty of care applies whether you are the owner or a tenant or

a licensee. The liability of an owner/occupier if a visitor is injured on the property is determined by considering whether there was a real risk of an injury occurring and what a reasonable owner/occupier would have done to prevent injury. That is to say there may be no liability where the risk of injury is obvious.

Therefore even if the owner of a property is ultimately responsible for maintenance, a tenant or licensee occupying property may still be responsible for injuries occurring on the rented or licensed premises. Accordingly, you may be liable even though your project space is owned by a separate property owner.

How to safeguard yourself

Identify risks

You need to identify the risks involved in your project. You should think about the possible situations where a person could be injured or property could be damaged, even if they seem unlikely to occur. Below are some questions to consider when identifying risks:

- Will members of the public visit your project space? If so, what are the risks of visitors getting injured (e.g. tripping over cabling, falling down a step)?
- Is any valuable item stored in your project space (e.g. artwork, equipment)?
- Will any employee, volunteer or contractor be assisting you? Will their work involve any risk of getting hurt?
- Will you sell products? If so, do any of these products carry the risk of malfunctioning or hurting the purchaser?

Minimise or avoid risks

Once you have identified the risks involved in your project, you must plan how to avoid or minimise the risks. This could include:

- warning signs, for example by labelling dangerous equipment or poisonous substances with a clear warning;
- waivers or release forms. For example, you could get workshop participants to sign a release form discharging you from liability in case of injury or accident. Waivers, however, cannot exonerate you from liability in all situations. For example, they are ineffective if the law imposes a strict liability on you in for certain damages. See the Arts Law Information Sheet: [Exclusion clauses, disclaimers and risk warnings](#);
- security measures (e.g. alarms, smoke detectors, sprinklers). In most cases, the Administering Body has already provided the necessary security measures in your project space. If you are concerned about the security of your space, contact the Administering Body; and
- training, including occupational, health and safety training for you and your employees, contractors, and/or volunteers.

Insurance

You can buy insurance, such as public liability, property, workers compensation, to protect you against the risk.

Insurance basics

When you get insurance, you enter into an agreement (**insurance policy**) under which you pay a sum of money (**premium**) against the insurer's undertaking that the insurer will compensate a third party for harm or damage you might cause to that person or his/her property.

The following types of insurance might be relevant in relation to people or entities involved in Creative Enterprise Hubs:

- **Public liability insurance** covers damage caused to a person or his/her property, but does not usually cover employees or volunteers. For example, if a visitor slips and is injured in a Program Participant's gallery, public liability insurance would cover any resulting damage suffered by the visitor. See below for additional information;
- **Product liability insurance** covers damage caused to people or property by faulty products. In Australia, there is strict liability for damages caused by defective products. This means that a person suffering injury or property damages from a defective product may recover damages from a manufacturer without having to prove intention or negligence on the part of the manufacturer. The term "manufacturer" is understood broadly, and includes importers of foreign products as well as people involved in the manufacture process. Accordingly, product liability insurance is particularly important to obtain if the project involves the selling of any merchandise that could cause injury to consumers. For example, crafts might contain dye or paint that could cause a person to become sick, or a lamp manufactured by a Program Participant could pose a fire hazard;
- **Workers compensation insurance** covers harm to a 'worker' injured at work. See the Arts Law Information Sheet: [Liability and insurance](#) for information on workers compensation insurance in Australia. If you are engaging people to work on a project you should check the workers compensation legislation of your state or territory to understand your obligations as an 'employer' regarding workers compensation for your 'workers'. Note that the definition of 'worker' in each state or territory may extend to:
 - people who engaged under a "contract of service" (employees) and who work on a full-time, part-time or casual basis;
 - people engaged under a "contract for service", who perform work as an independent contractor or who are sub-contractors (working for a principal contractor);
 - company directors engaged under a "contract for service"; and
 - volunteers or interns that do not receive payment for the work (apart from any payment for expenses).
- **Professional indemnity insurance** covers damage caused to a person as a result of one's professional activity. For example, a person relies on the professional opinion expressed by a Program Participant in an article and suffers damage because the opinion was incorrect;
- **Property (building and contents) insurance** covers the replacement and repair of things in the insured property, for example damage to a Program Participant's studio or artwork, theft of materials;
- **Transit insurance** covers the replacement and repair of the insured item, for example art equipment stolen, destroyed or damaged during delivery or on loan;
- **Volunteer insurance** covers damage caused to a volunteer assisting in the Creative Enterprise Hub;
- **Other insurance:** you may consider taking out other insurance policies (e.g. general business insurance), or you may otherwise be required to take out other insurance policies by law. Contact Arts Law or consult *The Arts Insurance Handbook* published by Arts Law or your

solicitor or insurance broker for more information on what insurance you need.

Public liability insurance

The Administering Body should take out public liability insurance to cover any damage to people or property occurring in the Licensed Area, i.e. the space made available to it under its licence agreement with the property owner (**Licence Agreement**). The [Sample Licence Agreement](#) in the suite of sample agreements requests the Administering Body to maintain a public liability insurance policy in connection with its use of the Licensed Area.

The Program Participant might be insured under the public liability insurance of the Administering Body for its use of the Licensed Area under the Participation Agreement. In other words, it's important for the Program Participant to ascertain to which extent, if any, he/she is covered under the Administering Body's public liability insurance, and take out his/her own public liability insurance to cover any gap in protection in relation to his/her activities. For instance, the Administering Body's public liability policy might fully cover any damage caused to people or property in the Program Participant's project space used as a studio and shop, but not extend to any liability the Program Participant incurs in relation to a market stall where the Program Participant sells his/her artworks or workshops conducted externally. In that situation, it is essential that the Program Participant take out additional public liability insurance.

Additional insurance for the Administering Body

As it essentially carries out an administrative function, not all of the insurance listed above is relevant to the Administering Body. In addition to public liability insurance (see above), the Administering Body might consider taking out the following insurance policies:

- **Workers compensation insurance** if the Administering Body has 'workers' – see the earlier discussion on *Insurance basics – Workers compensation insurance* and the need to consider how the relevant statute in your state or territory defines workers that are entitled to the protection of workers compensation insurance: Also see the Arts Law Information Sheet: [Liability and insurance](#) for information on workers compensation insurance in Australia;
- **Volunteer insurance** in the event that volunteers are assisting the Administering Body: the volunteer insurance will cover damages suffered by a volunteer in the course of his/her activity for you.

Additional insurance for Program Participants

As mentioned above, the Administering Body has possibly taken out a public liability insurance policy, which may extend to cover your project. Program Participants should inquire with the Administering Body as to whether its insurance policy offers the Program Participant any protection. However, even if this policy does cover your project, it is likely that it only applies to harm you cause to a person or their property who visits your project space. It may not cover employees or volunteers or damage to your own property.

Accordingly, you should strongly consider purchasing your own insurance policies to cover any risk not covered. Some insurance is compulsory. You may need more than one type of insurance, such as:

- **Workers compensation insurance:** If the Program Participant has 'workers' – see the earlier discussion on *Insurance basics – Workers compensation insurance* and the need to consider how the relevant statute in your state or territory defines workers that are entitled to the protection of workers compensation insurance: Also see the Arts Law Information Sheet: [Liability and insurance](#) for information on workers compensation insurance in Australia;

- **Contents insurance:** the Administering Body's policy does not cover goods, equipment or personal effects brought onto the premises by you as part of your project. Accordingly, you should obtain contents insurance to protect goods and equipment in your premises from damage or theft;
- **Other insurance:** you may consider taking out other insurance policies (e.g. general business insurance, volunteer insurance) or you may otherwise be required to take out other insurance policies by law. You should speak with Arts Law (or consult *The Arts Insurance Handbook* published by Arts Law) or your solicitor or insurance broker for more information on what insurance you need;

Tips for buying insurance

In some cases, group insurance may be available and a cheaper option for you. For example:

- **National Association for the Visual Arts** (NAVA; www.visualarts.net.au) provides a members-only public and product liability and professional indemnity insurance package for visual artists and craftspeople;
- **Ausdance** provides a members-only public and product liability and professional indemnity insurance package for dance teachers, dancers and dance companies (www.ausdance.org.au);
- **Duck for Cover** provides members-only public liability insurance for performance based artists (www.duckforcover.com.au).
- **Flying Arts** provides a members-only public and product liability and professional indemnity insurance package for artists, artworkers, writers and musicians and extends to limited cover for teaching and training students (www.flyingarts.org.au);
- **Local Community Insurance** provides insurance to clubs and community groups (www.localcommunityinsurance.com.au).
- **Regional Arts NSW** provides public liability insurance and volunteer insurance cover for incorporated entities in New South Wales, provided the entity is an affiliate of Regional Arts NSW (www.regionalartsnsw.com.au).
- **Regional Arts Victoria** provides public liability insurance and volunteer insurance cover for arts groups and individual artists. Although the organisation focuses on Victorian artists, its insurance policy is available to artists throughout Australia (www.rav.net.au).

Further Information

The following publication on insurance issues is available from the Arts Law Centre of Australia:

- Catherine Fargher and Seth Richardson, *The Arts Insurance Handbook: A Practical Guide for Artists and Arts Organisations*, 2nd ed, Arts Law Centre of Australia, 2005

Useful resources:

JusticeConnect: Insurance for NGOs <http://www.nfplaw.org.au/insurance>

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