

THE ARTS INSURANCE HANDBOOK

A practical guide for artists
and arts organisations

Fourth Edition

Arts Law Centre of Australia

By Catherine Fargher and Seth Richardson



**WOTTON
KEARNEY**

The Arts Insurance Handbook
A Practical Guide for Artists and Arts Organisations
By Catherine Fargher and Seth Richardson

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DISCLAIMER

The information in this book is general and is not intended as a substitute for legal advice. Laws relating to insurance change often. If you require legal advice, please contact the Arts Law Centre of Australia or a solicitor or other legal service – contact details for free or low cost legal services are provided in Appendix III.

FOURTH EDITION ACKNOWLEDGEMENTS

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The Arts Law Centre of Australia acknowledges all Traditional Owners of Country throughout Australia. We recognise Aboriginal and Torres Strait Islander peoples' continuing connection to land, place, waters and community. We pay our respects to them and their cultures and to Elders both past and present.

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Introduction to the fourth edition

In the years since the first edition of the Arts Insurance Handbook was published the insurance sector has been subject to significant financial pressures and has undergone numerous legal changes. The most recent instalment of Creative Australia's cultural economics studies associated with artists' abilities to make a living in Australia, *Artists as Arts Workers* by David Throsby and Katya Peteskaya, demonstrates the ongoing financial pressures and risk for artists. The need for artists' access to affordable and effective insurance products, and for accessible advice about insurance, remains significant.

Most artists and arts organisations that come to Arts Law don't have large incomes. In the first edition of the Handbook we referred to a 1989 study that showed that across all art forms the average artist's income from arts-related work was \$15,500.¹ In over a decade little has improved. The 2002 Myer Report into Contemporary Visual Arts and Craft (Myer Report) found that two thirds of artists earn less than \$10 000 from their creative practice. In 2003, the Media Entertainment and Arts Alliance noted that the 2001 median creative income for actors and directors for was \$10 500; for dancers and choreographers \$12 900; and for musicians and singers \$10 500. In 2008 these figures have increased somewhat but only 55% of artists surveyed reported they earned enough from all their sources of income to meet their basic needs. A detailed analysis of this issue was undertaken in the Throsby/Peteskaya study referenced, and its predecessors such as *Don't Give Up Your Day Job – An Economic Study of Professional Artists in Australia*.²

One thing is clear: while you want to protect your livelihood, you don't have the budget to spend on high insurance premiums or costly financial advice. You need to find the most economic ways of protecting yourself and your livelihood so that your emphasis rightly remains on your art.

Imagine the following scenarios:

- You are exhibiting your glasswork in another city and call on the services of a fine art removalist to help you. You decide that you'll take out insurance cover, and the carrier advises you that Class 'A' should cover you. You don't see a copy of the policy but agree to pay the money anyway. When your pieces of work arrive at the gallery in pieces, you check the policy – to find out that Class 'A' insurance doesn't cover glass! Will you be able to claim?
- You are a board member of a theatre company, limited by guarantee, which is currently in financial difficulty. A musical called '*The troubled childhood of Saddam Hussein*' is soon to open and the director of the production has suddenly resigned. A new director is engaged but unfortunately the musical turns out to be a spectacular flop. The production closes after one week and there are no funds to pay the various creditors, including the new director. A letter from the director's solicitors threatens to sue not only the company but its directors and officers as well. Are you covered?
- You have a studio space where you make ceramics. Until recently you had only a few infrequent visitors. Now you have decided to take a small class which you will charge for. At the first class 20 people attend. During the class a large lump of clay flies off the electric wheel creating a rather nasty projectile and hitting an unsuspecting student. Have you taken out appropriate insurance?
- You are a member of a small poetry collective, which, until recently, held monthly readings at a local venue. The venue insists you are no longer covered by their public liability, and when you contact a few insurance companies, they all tell you they are 'getting out of non-profits'. How will the show go on?

Many readers may recognise these sorts of risk scenarios. If you are working in an arts organisation there are many factors to consider. There are legal obligations towards employees, volunteers and the public, as well as insurance for vehicles, equipment and premises. Increases in commercial dealings will often require quite complex forms of insurance. Therefore, it is important to understand where savings can be made and the benefits of sound financial and risk management. Half the arts organisations surveyed for this book rated their knowledge of insurance law as moderate. The Myer Report found that “[m]any practitioners are also unaware of the importance of insurance and associated legal obligations.”³

This book aims to provide a straightforward guide to the commercial insurance world for artists and not-for profit arts organisations. It provides information on the legal obligations you have in taking out policies, as well as the legal steps you might have to take if the insurance company refuses to pay. A large number of contact details are provided and further readings suggested. This book is designed, in part, to help you to help yourself.

¹ D Throsby and D. Mills *When Are You Going to Get a Real Job?* – An economic study of Australian Artists, Australia Council, 1989, p 13.

² David Throsby and Virginia Hollister, Australia Council, 2003. [*‘Don’t give up your day job’*](#)

³ Myer Report, Contemporary Visual Arts and Craft Inquiry, 2002, p 129.

How to use this book

Part I represents a basic introduction to the legal and commercial aspects of the insurance world. Whatever your art form – read Part I.

Part II deals with the insurance needs of specific arts areas. These include Visual Arts and Craft, Music and Promoters, Theatre, Film, Writing, and Multimedia. Consult the chapter most appropriate to your work, in conjunction with Part I.

The five appendices provide a glossary of common insurance terms, provide legal contacts, details of insurance industry bodies and list companies and brokers in the insurance industry who specialise in arts areas.

The Arts Insurance Handbook is written specifically for you – the arts sector. So, if you want information and advice on:

- how to lower your insurance costs
- what your legal obligations are towards your insurer
- understanding the myriad of insurance products on offer
- how to handle a dispute with your insurance company
- how to locate and use the services of an insurance broker
- what role the Australian Securities and Investments Commission (ASIC) has in insurance
- what to do if you are refused insurance
- who has set up umbrella insurance schemes
- how to find lost superannuation payments
- getting stamp duty exemptions or charitable status
- how to pool together with other artists to get insurance products
- and much more...

then read on.

1. THE INSURANCE WORLD

1.1 What is insurance?

Insurance is about protecting yourself against risks. Basically, you pay money to another person or entity (the insurer) in exchange for them agreeing to pay the money you would lose should a particular event occur in the future. For example: if your equipment is stolen; if you get sick and can't work; if your performance gets cancelled due to weather and you don't get paid; or, if somebody sues you because they are unhappy with something you have written about them. This exchange (money paid to another entity or person on the understanding that they will cover certain future losses) is a legal agreement or contract. The agreement or contract ultimately takes the form of an insurance policy. The amount of money you pay upfront is called a premium. The premium is consideration. In legal terms, this is paid in exchange for a promise from the insurer to pay money out if something specific takes place.

Another helpful way to look at this is that insurance involves the transference of risk. The insured person transfers the risk of monetary loss to an insurer, who in turn redistributes that risk by investing the premiums received from people who have purchased insurance policies (in turn, earning money on those investments).

In a way, insurance is a kind of legalised gamble because there is always the possibility that the event that the policy covers against never happens. If the event the subject of coverage doesn't occur, you will have paid your premiums but will not receive any money back. Likewise, if the specific terms of the contract do not cover what does happen, you may also have paid your premiums but not stand to recover any of those costs. For example, if a gallery or house and its contents, including artworks, were insured against fire, but there is a flood (which is not covered), then the damage to the artworks caused by a flood won't be covered under the policy.

In other words, it is only if the terms of the insurance policy specifically address what ends up happening, that you stand to get something back from the insurer. The person or organisation taking out the insurance therefore needs to carefully consider all the things that might happen and whether they want to pay money now to be covered if those things do end up happening.

1.2 What sorts of insurance are there?

There are three main areas of insurance on the market which may be of relevance to you: Life Insurance, General Personal and Property Insurance, and Liability Insurance.

Life Insurance provides cover (usually for loss of income and other earnings) when a person dies. Anyone with a so-called "insurable interest" in someone's life can take this type of insurance – generally, this is anybody who might suffer financially because of a person's death. You can have an insurable interest in your own life. Parents can also have an interest in the lives of children. Wives and husbands have an interest in the life of their spouse, and so on.

General personal & property insurance includes cover for the risk of loss or damage to property, for example, to your home, studio, vehicle or equipment. Personal insurance includes cover for when you get sick or injured, including cover for medical expenses and for lost income.

Liability Insurance provides protection against the risk of another person claiming that you are responsible for loss they have suffered. In this way, liability insurance is different to other types of

insurance. While insurance generally covers loss for things might directly happen to you (i.e. getting sick or being burgled), liability insurance can provide cover for claims involving physical injury, for instance, where a person is injured on property that you own. It also includes professional indemnity insurance, which covers financial loss that a person claims to have suffered as a direct result of you doing your job. An example of this is a writer being sued for defamation (reputational damage) because of something they have written.

Within the three broad types of insurance there are many insurance products. Most arts organisations surveyed for this book had taken out between five and seven insurance products.

Common insurance products include:

- **Home or building insurance**

Home insurance provides protection for loss or damage that is caused to your home or premises because of specific events or causes outlined in the insurance policy. For instance, damage caused by fire.

- **Contents insurance**

Contents insurance provides protection for loss or damage to what is inside your home or premises (i.e. your belongings). Contents insurance can be included as part of a home or building insurance policy. It is always important to check that specific items, especially valuable ones and ones you need to do your job such as a laptop, are listed in the policy documents, as they often are not. Standard contents insurance may not cover your property when it is away from a specific location, so you should make sure important or valuable items are covered when you are travelling or working away from your usual workplace.

- **Personal effects insurance**

This insurance can provide protection for personal items when outside your home. Sometimes this cover will be included in a home and/or contents policy. For those who work with moveable items such as musical instruments or laptops this insurance product is important. As noted above, you should make sure anything particularly valuable or important to you is listed in the policy. You should also confirm that the dollar amount of cover provided is enough to cover the value of your items, especially if you own things that are particularly expensive.

- **Income protection insurance**

Income protection insurance provides cover for when you cannot work and earn money because of injury or illness. If you are self-employed and/or work from home, it may also be worth considering cover for business expenses, not just loss of income. The cost of this policy will depend on a number of things including your age, income, and what is covered under the policy. You should review your income protection insurance each year to ensure it still provides enough cover for your current income level. It is worth noting that if you are injured or ill and are unable to work may be entitled to apply for a social security payment. Contact Centrelink or [Economic Justice Australia](#), who have free legal services in each state and territory.

- **Product liability insurance**

This form of insurance provides protection when a product manufactured or supplied by you causes loss to another and usually includes where a person has suffered personal injury or damage to their property because of your product.

- **Business insurance**

Business insurance can cover a whole range of matters that might affect a business, including: machinery and electronic equipment breaking down; accidental damage to property; damage to goods in transit, interruption to business because of a specific event (i.e. a natural disaster or pandemic), fraud by others resulting in loss to the business, burglary, fire and other damage, liability to others for personal injury and product liability, and tax audit costs.

- **Motor vehicle insurance**

Requirements of motor vehicle insurance, particularly third-party insurance, will vary in each state and territory in Australia. Comprehensive motor vehicle insurance usually covers accidental damage, theft, or fire to your vehicle as well as the costs involved where you damage someone else's vehicle or property.

Third party insurance, on the other hand, will only cover a situation where your vehicle causes damage to somebody else. In other words, it will not cover the costs relating to your own vehicle's repairs or other loss. Third party insurance is generally compulsory and included as part of your car registration costs.

- **Travel insurance**

Travel insurance provides a range of cover for people when they are travelling. It can include cover for cancelled flights and accommodation, lost luggage (including cameras, computers, and other equipment), as well as covering the costs of medical care and emergencies.

- **Stall holders' insurance**

This insurance is specifically for stall holders at a festival or market. It can include a range of coverage, including public and products liability. It is effectively a smaller scale version of business insurance.

- **Public liability insurance**

Public liability insurance will cover you for amounts you may need to pay if you are legally responsible for loss or injury suffered by other people (including physical injury as well as property damage). For more information see Chapter 5 – Public Liability and Insurance for Volunteers – Are you Covered?

- **Volunteer insurance**

This insurance covers any listed volunteers for personal accident or injury while working for your organisation.

- **Workers' compensation insurance**

Workers' compensation is a compulsory type of insurance for employers in all states and territories within Australia. Workers' compensation covers employees in relation to personal injuries that take place in the course of their employment. Compensation may include weekly payments to cover loss of earnings, medical expenses, and rehabilitation. It is also designed to assist the injured worker in returning to work as soon as possible following the injury.

- **Event insurance**

Event insurance covers loss where a specified event is interrupted, postponed, or cancelled.

- **Directors' and officers' liability insurance**

Directors' and officers' insurance provides cover to an organisation's board members and key employees (officers) if they are sued by a person for breaching their duties.

1.3 What laws govern the making of an insurance contract?

The key laws relating to Australian insurance practice are contained within three pieces of legislation: the *Insurance Contracts Act 1984* (Cth), the *Corporations Act 2001* (Cth), and the *Life Insurance Act 1995* (Cth).

Set out below is a short summary of some of the more important provisions. In this section all references to legislation are to the *Insurance Contracts Act (ICA)* unless specified.

The duty of utmost good faith

Insurance contracts are based on the principle that each party to the contract (i.e, the insured and the insurer) must act toward the other with the utmost good faith. What this means in a practical sense is subject to ongoing discussion and debate, but it has been said to mean that every party must act with fairness, decency, and fair dealing as well as honesty in their dealings with one another. Examples include an insurer not delaying in deciding a claim, or an insured telling an insurer about all relevant matters when they are applying for an insurance policy.

Duty of disclosure

This is an aspect of the insured's duty of utmost good faith and is also contained within the ICA. The insured has a duty to tell the insurer of every matter that they know (or that a reasonable person would know) is relevant to the insurer's decision to agree to provide insurance. These matters need to be told to the insurer before the insurance contract is entered into. We discuss this duty in more detail at 1.4 below.

In return, the insurer has an equally important duty to tell the insured any specific limits or provisions in the policy that may impact on their decision to proceed with the insurance. If the insurer does not properly bring them to the insured's attention, it may mean the insurer cannot later rely on those limits and conditions to refuse cover for a claim.

Standard cover

For certain types of insurance cover, including home building and contents insurance, motor vehicle insurance, sickness, accident and travel insurance, the insurer must pay a set minimum insurance amount if a particular 'prescribed' event takes place, even where the policy documents might state a lesser amount. An insurer can only avoid the minimum payment if the customer is informed in writing of the difference between the company's policy and the standard cover.

Cancellation

Insurance companies can only cancel a policy in specific circumstances, including where enough written notice has been given, or if the insured does not do something they are required to do under the terms of the policy.

1.4 What are your legal obligations?

As discussed above, the insured has a duty to tell the insurer about anything that might be relevant to the insurer deciding to enter the insurance contract – this is called the 'duty of disclosure'.

Examples of things you would commonly need to tell an insurer (depending on the type of insurance) are:

- any previous refusals by other insurance companies;
- any previous claims under other, similar policies;

- a criminal record and/or previous bankruptcy;
- any convictions for traffic offences;
- that your car's locks are faulty.

However, there are some things that an insured does not need to tell an insurer. These are matters that:

- reduce the risk to the insurer (i.e. make it less likely that loss or a claim will occur);
- are common knowledge;
- the insurer ought to know in the ordinary course of doing its business; or
- the insurer waives disclosure of (i.e. that the insurer says they do not need to be told about).

If in doubt as to what to disclose, discuss this with your insurance agent, broker or get legal advice. In general, it is safer to disclose everything that might have some relevance to an insurer even if you do strictly not have to (i.e. something that reduces the risk). Doing so might even mean your premium ends up being lower because it is something that reduces the risk involved e.g. if your car/equipment is stored in a very secure garage overnight (see Chapter 3: Reducing Your Insurance Costs for more information).

The duty to disclose relates to advising the insurer of all relevant matters before the insurance contract is entered into, but the responsibility is ongoing – if you renew premiums annually, and things have changed, the insurance company should be told. If things change during the year that are relevant (e.g. you purchase some new equipment) you also need to tell the insurer.

If the insurer is not properly advised of all relevant matters, it may mean that a claim is refused, or the payout is reduced (among other potential consequences).

1.5 What are the insurers' obligations?

Insurance companies must:

- act in good faith and clearly inform consumers of the restrictions or exclusions to a policy;
- give at least 14 days' notice in writing prior to the expiry of a policy;
- not cancel a policy except in certain prescribed circumstances (these grounds are set out in section 60 of the ICA and include where the insured has failed to act with utmost good faith, made a misrepresentation, failed to pay the premium, or made a fraudulent claim).

Insurance companies and their employees are subject to the General Insurance Code of Practice. This is a code that sets out standards of practice and the relationship between insurers, agents, and customers. A copy of the Code can be obtained from the Insurance Council of Australia or at <https://insurancecouncil.com.au/cop/>.

In addition, the Australian Prudential Regulation Authority (APRA) maintains a register of all authorised insurers for each type of insurance – www.apra.gov.au.

Further reading:

The Law Handbook for most State and Territory can be accessed online by searching 'Law Handbook' and the relevant State. The Law Handbook provides a plain English overview of many legal topics, including insurance. A search for the Law Handbook generally will also provide links for additional local legal services that may be able to provide additional advice.

Australian Securities and Investments Commission (ASIC) A range of information sheets with tips on what to look for in an insurance product are available at www.moneysmart.gov.au.

Legislation – Legislation including the *Corporations Act* 2001 (Cth), the *Insurance Contracts Act* 1984 (Cth) and *Life Insurance Act* 1995 (Cth) can be accessed online at www.austlii.edu.au or <https://www.legislation.gov.au/>.

2. LOOK BEFORE YOU LEAP – SHOPPING FOR INSURANCE

We have all heard the warning “don’t forget to read the small print”, and yet time after time people will buy insurance policies and sometimes pay premiums for many years, only to find out in the event of a claim that they are not covered.

In the first edition of this Handbook we noted that a client of Arts Law purchased an insurance policy from a fine arts removals company and found that her ceramics were not covered by the Class W policy that she bought. There has been no change in insurance law to prevent this situation happening today – you must ensure that you understand your insurance needs and the policies you have purchased fully cover those needs or alternatively understand what risks you have assumed.

It’s a highly commercial area, so the more you know about it, the more likely you’ll know what you want and get a good deal. This chapter explores what you’ll be buying, from whom, and what to look out for.

2.1 Who you’ll be buying from: agents & brokers

While exploring the insurance landscape there are two main creatures you will come across: insurance agents and insurance brokers. The agent sells policies for an insurance company and represents their commercial interests, while the broker will purchase insurance on your behalf and should have your interests at heart. Agents and brokers are regulated by the Australian Securities and Investment Commission (ASIC) according to the provisions of the *Corporations Act 2001*. All sellers of insurance products to retail clients are required to obtain an Australian Financial Services Licence. This requires that the sellers provide financial services efficiently, honestly, and fairly and that they have in place internal systems to ensure compliance with the requirements of the Act.

Agents

Agents sell policies for certain insurance companies only and represent their own commercial interests. Agents must not represent themselves as insurance brokers.

Brokers

Almost every arts organisation surveyed for this book used an insurance broker either occasionally or regularly.

Brokers run their own businesses and are independent of insurance companies. A broker has a duty to provide professional advice, and a client could claim against a broker in the event of negligent advice. Note that some brokers will work largely with one insurance company. Where a broker has an association with an insurance company the broker must advise the client of the existence and nature of the association. In the case of *Elilade Pty Ltd v Nonpareil Pty Ltd*¹ in relation to the general duty owed by a broker, the court said, “[the broker’s] engagement obliged [it] to provide [the client] with advice and assistance to enable it to make an informed decision about its insurance requirements, and to instruct [the broker] about what insurance cover to procure on its behalf.”

Brokers must disclose in writing any fees or charges for arranging the insurance, the cost of the premium and provide details of the insurance company.

All brokers are required to be licensed by ASIC, although a broker can be licensed without being qualified. The highest standard for brokers is the professional accreditation of Qualified Practising Insurance Broker (QPIB).

The industry body for insurance brokers is the National Insurance Brokers Association (NIBA). Members of NIBA are bound to act in accordance with a Code of Practice, which covers:

- Acting in the best interests of the client;
- Providing advice and guidance to enable clients to make informed decisions on risk and insurance protection;
- Providing full and accurate information for effective underwriting;
- Respecting the client's confidentiality in relation to all records and information;
- Ensuring the validity and accuracy of all documentation;
- Making available all relevant documentation, policies, certificates, endorsements, and premium calculations, as may be required;
- Being professional, efficient and responsive in all dealings;
- In the event of a claim, taking every step necessary to ensure prompt and fair settlement;
- Working towards maintaining and enhancing the reputation of NIBA and its Members; and
- Acting in the spirit of this Code and encourage others to do likewise.

You can view the whole Code at the NIBA website at www.niba.com.au. ASIC holds information on insurance brokers that can be publicly accessed to check your insurance broker is licenced, at www.asic.gov.au.

Specialities of relevance to the arts sector are: Arts and Antiques; Associations; Conference/Exhibition; Director and Officers; Electronic Equipment; Income Protection; Intellectual Property; Entertainment/Exhibition/Conference; Events; High Risk Liability; Management Liability; Musical Equipment; Volunteer Groups; Leisure Liability; Musicians; Non-Appearance/ Non-Performance; Professional Indemnity; Public Liability, Showmen Liability; Libel and Slander; Motor Vehicles; Museums; Photographer; and Surety Bonds.

2.2 What you'll be buying

When you purchase insurance, it will usually be in the form of a policy, for which you'll pay a periodic premium. A premium is the price you will pay to keep your insurance policy active. It operates similarly to a monthly subscription to any other service, but premiums can change in accordance with risk, coverage amount, and other external factors.

Premiums vary from company to company and so do policies, but premiums on their own are not the best indication of value in policies.

Here are some important points to note:

Type of Policy: It is important to compare 'Indemnity' with 'Reinstatement' and 'Replacement' contracts. Indemnity insurance covers the insured only in respect of the actual loss he or she has suffered, taking factors like wear and tear into account. The measuring yardstick is the market value of the property lost or destroyed at the time and place of the loss. If it is only a partial loss the measure of indemnity cover is the cost of repair. You should be aware that the sum insured does not necessarily represent the measure of indemnity. Replacement policies, by contrast, require the insurer to pay for the replacement of the lost or destroyed goods as new – what is commonly known as “new for old” cover – without reduction for depreciation. The premiums for this type of policy are usually higher.

If there is a choice in the policy it is generally the insurance company who has the right to exercise that choice, to repair or replace, not the insured.

Excess: If your policy contains an excess or deductible, you will not be covered for the entire value of the property. Excesses can range from \$50 for each claim, to thousands of dollars, depending on the policy you buy. Consider whether the amount of excess you would have to meet in the event of a claim really balances out against what you save on premiums. On the other hand, if you can get a greater cover through accepting a higher excess, you may be at an advantage.

An excess is generally due on filing of a claim. Sometimes if the loss arises from another party's fault, however, your company may waive the excess payment.

You will be required to pay the excess amount for each 'event' or 'occurrence' that you claim for. This may mean that if you file two claims within a short period, you are also obliged to pay two separate excess amounts.

Defined Events: What "defined events" are you covered for? Check that your situation is covered with reference to the definitions in the policy itself. For example, if you are a glass artist, there is no use in buying a cheaper transit cover if it does not cover damage to glass work. Similarly, if you are in an area prone to flooding or earthquakes there's not much point in purchasing insurance for the studio and its contents, which covers everything but those eventualities. Note that in many states, the majority of house and contents policies do not cover flooding, however they are likely to cover storm damage and urban drainage overflow. So it's important to check your policy - are you covered for tsunamis (tidal waves) or earthquakes in your area, if there is a real chance that there could be one? Similarly, bushfire victims may have either no insurance or insufficient cover to ensure they could rebuild or replace their property. If your home office or premises are at risk of flood, fire or earthquake, it is important to have a professional valuation undertaken and a review of replacement costs when calculating the sum insured and also to ask your insurance agent or broker directly if you are covered for prescribed events and for losses under all aspects of your policy (i.e. building and contents). Note that according to section 35 of the [Insurance Contracts Act](#), the standard cover provisions in respect to contents insurance includes: *loss that is caused by the results from ...storm, tempest, flood, the action of the sea, high water, tsunami, erosion or landslide or subsidence*⁵⁰⁰³ *if the insurer wishes to limit their liability they must show that they have clearly informed the consumer of the limitation in writing before the contract was entered into, or that the consumer knew, or ought to have known of the limitation or exclusion.*

Cover note: Does a cover note represent real insurance cover? Some classes of insurance cover can be started with the issue of a cover note from an agent, or a slip from a broker. This is still effective cover, contingent on the complete policy proposal form being returned to the insurer within 15 days. The same duty of disclosure applies for a cover note.

Policy terms: Some wordings convey greater cover than others – for example "broad cover" as against "occurrence" or "accident" in general property policies. While it's impossible to go into this in detail here don't forget to check it with the broker or agent, to make sure you're buying the broadest cover you can. You must read your policy or ask specific questions of your broker to ensure your policy provides the cover you require. If, in the period of your insurance, an opportunity (e.g. an additional exhibition or tour) arises that you are not sure will be covered by your current policy, call your insurer or broker to check first.

Your policy will contain a definitions section. The words that are specifically defined in your policy should only be read with the definition in the policy in mind. Usually (but not always), specifically defined terms are highlighted in the body of your policy.

Your policy will also contain a section detailing the limits of coverage in the policy for the risks covered. These will not always be the same and it is very important that you check that you have

sufficient coverage for the risks you need covered. For example, your policy may have a \$20 million dollar limitation for public liability cover but a \$10,000 limit on faulty workmanship cover.

2.3 Determining your insurance needs and acting on it

Insurance is expensive to buy, so it's important to be well prepared. Know what your risks are and do some preliminary research into costs and brokers. The following is a suggested approach to determining your insurance needs and obtaining appropriate cover.

Determine what risks your art form or organisation has. The information in the chapters about each art form will help in doing this. Here's an example: a craftsperson with a production studio which has a large amount of stock stored in it, gives classes and has a vehicle to transport stock to galleries. Obvious risks to identify would be:

- Fire, theft and burglary, or multi-risks, to studio and equipment
- Fire, theft and burglary to commercial stock
- Business interruption losses in the context of damage to the studio
- Possible injury to people or property of visitors to the studio including students
- Fire, burglary or multi-risks to vehicle
- Third party damage or injury from the vehicle
- Damage to stock in transit
- Loss of income due to illness or accident
- Worker's compensation for you and/or any employees
- Breaches of work health and safety obligations
- Employment related litigation

Look at your own situation first to determine the risks before you try to acquire insurance. Also, remember that most artists and arts organisations will require a number of insurance products concurrently; the majority of arts organisations surveyed for this book had five or more insurance products. Management of such a large number of insurance products requires planning and information.

For example, the Grafton Regional Gallery, Tropfest, and Arts Northwest, whose activities ranged from visual arts, regional arts, and community cultural development, to film screenings, each required seven insurance products: public liability, workers' compensation, professional indemnity, contents insurance, equipment insurance, motor vehicle and volunteer insurance.

In the example given above, the artist with a studio which people visit, might require general property insurance for their studio, contents and stock, as well as public liability, vehicle, transit, and sickness and accident cover.

Determine what sort of insurance you need

A familiarity with the kinds of insurance each risk requires is useful. For one thing, it will allow you to present your risk to an agent or broker in a favourable light and enable you to shop around more effectively.

Do some preliminary research. How can you present your risks in a manner that will enable you to be insured? Assemble information that the broker will need to know so you can purchase effective cover.

Information on risks

An information statement about your business or organisation could include the following:

- Your, or your group's, activities
- Structure of organisation – sole trader, partnership, company, etc.
- Number of members, employees, volunteers, etc.
- Value of assets, condition and storage arrangements
- Previous accidents, losses, or insurance claims
- Insurance already held and/or cancelled
- Fund-raising activities
- Material information about the above, i.e. are there any special facts which the insurer should know about any of the above, which would affect the assessment of risks?

Determine what sort of coverage you need

If you have assets worth \$150,000 it is no use getting a \$50,000 cover just because it means a lower premium as the insurance contract may be subject to an averaging clause which reduces the insurer's obligation to pay (see Chapter 1).

Similarly, if you are a film production company, and you're required to have \$10 million dollars public liability cover, you would be grossly under-insuring if you purchased a \$5 million cover.

In addition, if you receive funding, the level of insurance protection you require may be specified by the agreement with your funding body.

Given the value of your assets, as well as your potential liabilities, identify what type of policy will protect you effectively – for example can you afford to have an indemnity policy rather than a replacement policy in the long run?

Find the right insurance company or broker

There isn't much point in using a broker who specialises in high-flying corporate insurance when you need to find one who is "arts friendly". Some Arts organisations, for example, Guildhouse, offer access to a tailored Arts and Craft insurance package to accredited members. Check with your colleagues or peak arts and craft body to see if this applies for your artform.

NIBA also provides a web-based broker search resource at <http://www.needabroker.com.au/html/>.

These days there are a number of companies that offer insurance targeted at Arts and Craft users. The same rules apply to purchasing any insurance, however; research, read, prepare and ask questions before signing up to buy a policy.

Talk to others in your field to find someone reputable and reliable. If you have to start from scratch with a broker who is not experienced in the arts, be certain to explain your financial and work situation fully so that misunderstandings about your needs can be avoided.

Another thing to be wary of is whether the broker or company is prompt and reliable in settling claims. Remember you can contact ASIC for certain information on brokers. If possible, talk to people about their experiences to try to find a broker or company that is not all talk and no action. One of the better indications will be whether they act for other arts organisations – if not, talk to other brokers.

Get quotes on coverage, premiums and policy details from two or more brokers or companies. Many insurance companies now provide online product descriptions and quotes, which allows you to do plenty of research in the area. It's worth listing and comparing premium and policy details, keeping in mind the shopping tips already mentioned – e.g. excesses, deductibles, replacement vs. indemnity policies, etc. If you've done your research well, you should be able to question brokers carefully to ensure that you're getting the coverage you need, and what the loopholes in the policies are. Finally, you might be able to do a bit of competitive bargaining if you've got all this information at your fingertips!

After deciding which policy (or policies) to buy, there are some important things to ensure before you enter into any insurance deal.

Read the fine print

There can be traps for the unwary in insurance policies. One State-funded contemporary art space purchased contents cover without realising that the policy excluded protection for any show that was government funded. Remember to read your policy carefully!

Insist on being given a draft of the policy you want to purchase and see if the terms cover your risk. If they don't – negotiate. Many brokers indicate that no policy is "fixed" in its terms: cover can be altered (even though it may cost more) so it can extend to your needs. If the first broker or agent you go to can't do this, don't buy the policy – shop around until you find the right one.

This does mean you need to start thinking about insurance cover well before you actually require it.

Ensure that you have a copy of the final contract and read it carefully so that you become aware and familiar with all rights and benefits under the policy, including exclusions, extensions and conditions. If you are uncertain as to provisions of the policy check back with the agent or broker and/or get legal advice – if possible, do this in writing so you have a record should a dispute subsequently arise. Make sure that it's updated when you pay your yearly premium. If you want any changes to your policy at the time of renewal, contact your broker or agent a month or so in advance in case you have to provide more information.

Once you have purchased your policy, keep a list or inventory of the details, including coverage, time limit for claims and renewal dates.

2.4 Tips for buying insurance

The *Our Community – Community Insurance and Risk Management Centre* previously provided 11 tips for securing a better deal when purchasing insurance. Their website is now sponsored by AON Insurance but the below tips are still valid:

- Prior to seeking a quote check your current insurance policy (i.e. are you already covered?)
- Check to see if you are covered for public liability by a blanket government or funding body scheme
- Give the insurer a reason to provide you with a quote
- If you already have a quote for an existing policy let the other insurer know
- Plan for the insurer to review your requirements
- Be thorough and complete all the questions in the forms
- Attach supporting information if required or if you think it will add to your application
- Provide accurate and truthful information, preferably in writing
- Put yourself in the shoes of the insurer
- Negotiate quotations terms with respect
- Ask for premiums to be paid monthly instead of one annual payment.

They also recommend that all community groups implement a risk management strategy (see Chapter 3 – Reducing your insurance costs – for more information.)

2.5 What if you are refused insurance?

There is no general obligation on an insurance company to provide you with insurance – it is simply a commercial arrangement that both parties must agree too. There are some exceptions, such as third party motor vehicle insurance and workers' compensation that are mandatory by law.

So if you are refused insurance you need to consider the following options:

- **Try to find out why you were refused insurance – was it because you were an unacceptable risk, or coverage is not provided in your field of work, or because of poor insurance history? Having this information will assist you in finding alternative insurance cover**
- **Approach another insurance company**
- **Contact a community-based insurance scheme, such as Community Care Underwriting Agency (see Chapter 5: Public Liability Insurance for more information).**
- **Contact the Insurance Council of Australia for guidance**
- **Use the services of an insurance broker, preferably one specialising in the arts sector**
- **Contact similar artists or arts organisations for information on who they insure with**
- **Contact your sector peak body for advice**
- **Put in place a risk management strategy (see Chapter 3)**
- **Can you come under a peak bodies' umbrella policy?**
- **Can you self-insure? (See Chapter 3)**
- **Lobby for change (we know you're busy, but it's worth a try!)**
- **Seek additional sponsorship or funds through fund raising to meet the cost of insurance**
- **Are you required by law to have the insurance? If not, consider the use of written risk warnings and waiver forms (we would strongly recommend that you get legal advice first)**
- **The General Insurance Enquiries and Complaints Scheme, is no longer in existence to address issues in relation to group buying, risk management, avenues for pooling arrangements and the possible use of brokers to find cover. However, the Financial Ombudsman Service ('FOS') has taken over as an informal dispute resolution service for consumers involved in a dispute with their insurer. Determinations by the FOS are binding on the insurer if the claimant accepts the decision but are not binding on the claimant if they do not agree. Call 1800 367 287 to contact the FOS.**

Don't take a refusal by one insurance company as meaning you or the event you are planning are uninsurable. There are a number of options you can explore and with the right advice and persistence you should be able to find the appropriate insurance for your needs.

If your current insurance policy is up for renewal and the insurance company decides not to reinsure you then the law requires that they need only give you 14 days' notice of their decision – that is 14 days until your current policy expires. This is a very short period in which to arrange alternate insurance. Many small independent arts organisations will struggle to be able to devote sufficient staff resources, time and expertise to negotiate insurance cover within a 14-day period. There are many insurance companies but only some will be familiar with the needs of the arts sector.

In Chapter 3, Reducing Your Insurance Costs, a number of steps are identified that can be used not only to reduce insurance costs but also arrange cover, including risk management, self-insurance, lobbying as a group, and policy packages.

However, the above are difficult to put together in a 14-day period. The crux of the message is **be prepared** – the strategies that you put in place to deal with the possibility of being refused insurance can be used when your policy is next up for renewal to push for a premium decrease or, at least, to minimise any increase.

Another option is to use the services of an insurance broker who can help negotiate cover in a short period.

Further reading:

Insurance guides provided by ASIC – www.moneysmart.gov.au/insurance,

Arts Law Information Sheets, Arts Law Centre of Australia – www.artslaw.com.au/info-sheets/info-sheet/liability-and-insurance/

Contacts:

- National Insurance Brokers of Australia (NIBA) – www.niba.com.au; Tel: (02) 9459 4300; -11/20 Berry Street, North Sydney, NSW 2060.
- Australian Securities and Investments Commission (ASIC) – www.asic.gov.au; Tel: 1300 300 630. ASIC consumer information.-
- Australian Financial Complaints Authority – Member-funded-service that provides external dispute resolution for consumers who are unable to resolve complaints with member financial services organisations. Tel: 1800 931 678 (free call) Mon – Fri 9am to 5pm or info@afca.org.au

3. REDUCING YOUR INSURANCE COSTS

In recent years, the cost of insurance has increased, making it particularly difficult for those in the arts sector to afford insurance if they have not experienced a similar increase in their arts funding or income. However, being uninsured is risky.

There are positive steps you can take to minimise risks or reduce premiums. Here are some points to consider:

- How can you change your own activities to reduce risks and reduce your insurance premiums?
- Are there possibilities for self-insurance and covering risks?
- What are the financial considerations of long-term coverage versus short-term savings. Can you balance reduced premiums and higher excesses?
- How can you lobby as a group to get cheaper premiums and the advantage of policy packages?
- Can your organisation get a stamp duty exemption?

3.1 Make changes to your activities – risk management

Risk management is a major tool to manage and reduce potential damage to an organisation and its staff. It is similarly useful in managing and reducing insurance costs. Many arts organisations use risk management strategies.

Given the increased workplace health and safety obligations on all organisations, risk assessment and management should be part of every organisation or workplace in any event.

Australian Standard ISO 31000:2018 states that risk management is:

“coordinated activities to direct and control an organisation with regard to risk”.

AUSTRAC defines risk management as:

“the process of recognising risks and developing methods to both reduce and manage those risks”.

In addition, AUSTRAC identifies a four-step risk management process:

- a. Identify risks;
- b. Assess and measure risks;
- c. Apply controls; and
- d. Monitor and review effectiveness.

The Australian Government’s business community website further notes that risk management can have a number of benefits:

- Improving relationships with customers, suppliers, employees and the community, by understanding and managing their expectations.
- Improving staff confidence in a safe work environment.
- Keeping the business open during natural or economic disasters, by having an emergency management plan.
- Reducing compliance and insurance costs by having a lower risk of damages.

Simply following the law may not be enough to ensure that you are managing risks well. For example, the law in some states or territories no longer requires incorporated associations to have public liability insurance. If you don't have a risk management plan and also don't have public liability insurance, you, as an individual, or your organisation could end up facing financially devastating legal claims and damages payouts. This could be a big financial blow to the organisation or you personally.

Risk management should be a continual and ongoing process – this involves regular reviews of the risk management strategy and being aware of relevant changes to the law. For example, Creative Australia reviews risk profiles and registers on a six-monthly basis and presents their findings to the Board of Creative Australia. If you have the funds, then you can hire a risk management consultant to work with to develop your strategy.

When you think about the risks you or your organisation face, are there ways you can do things differently to reduce those risks and reduce your premiums at the same time? For example: if you have a building with rickety wooden stairs and no sprinklers, the building could be considered an 'above-normal' fire risk, and you may be looking at higher premiums to insure it. By improving the safety, installing sprinklers or improving fixtures you may present less of a risk. Another example is if you are a multimedia artist who works from home with expensive computer hardware and software. If you buy appropriate virus software and extend the warranties, this will reduce the risk to your computer set up and will be better than relying solely on insurance products to cover you.

Tips for risk management

- **Security systems: high quality security systems will reduce risk of theft and damage.**
- **Waivers and release forms: participants in workshop activities can be required to sign release forms which state that your organisation is not legally responsible in the event of an accident. Note that this is not fool proof and if an accident causes considerable injury or damage, it may not prevent legal action being taken against you or your organisation.**
- **Training new members of your organisation can improve risk management: because the realities of arts organisations mean that there is often high staff turnover, it's important to train incoming staff, board members or volunteers in safety procedures, risk prevention and how to report accidents if anything does happen. For example, if you have lots of volunteers or new staff, an accident may occur without your being aware of it. Work Health and Safety legislation in many states has put responsibility on staff members and volunteers in the organisation to maintain safety. If a claim is brought at a later date, even years later, you could encounter difficulties. Decide on an induction procedure to follow, forms to fill in, so all statements and details can be gathered at the time an accident occurs. Make sure you keep your induction paperwork. Good record keeping could be key to limiting a claim against you. See Chapter 4 for more information about workers' compensation and occupational health and safety.**

A detailed set of information sheets on risk management can be downloaded from the Our Community AON sponsored website at www.ourcommunity.com.au.

Once you have taken steps to minimise your insurance risks you should pass this information on to your insurance company or broker and ask to have them re-assess your policy when it is next up for renewal.

3.2 Self-insurance: juggling excess and premiums

Instead of having commercial insurance, you might think about covering the possibility of certain risks yourself. For example, you may put money aside in case of accidents or damage to property rather than continue to pay premiums.

Don't be unrealistic, as heavy losses might result if you have not estimated possible costs correctly and if you have not put enough money aside. You could end up with no insurance at all.

In some states (i.e. Qld), it is possible to apply for a self-insurance license, and there are insurance companies that will assist with self-insurance in the area of workers' compensation, including conducting feasibility studies, preparing business cases, preparing license applications, developing communication and transition strategies, and conducting independent WHS audits against self-insurer standards. Note that becoming a workers' compensation self-insurer has significant compliance and qualifying requirements and the license fee alone could put most arts organisations out of the running!

If you do take out commercial insurance against major risks, you can considerably reduce your premiums by accepting high excesses or deductibles. This means that you will cover the first part of any claim, up to a certain amount. It's worth considering that in areas where a major loss could be incurred – for example if an entire building burns down – you could well achieve a higher amount of cover by accepting a large excess and paying a lower premium.

3.3 Cheaper cover – lobbying as a group, policy packages

Research in the insurance field confirms that many of the difficulties that artists experience in getting insurance result from their sole-trader status. Quite simply, insurance companies tend not to underwrite activities whose risks are hard to assess. If artists lobby as a group, and present adequate information, they may be able to get cheaper premiums as well as acquire insurance cover that would normally be unavailable to them. A representative association can achieve a lot in this area. Check if your association offers this service.

Here are some examples:

- **National Association for the Visual Arts (NAVA)** provides a members-only public and product liability and professional indemnity insurance package for visual artists and craftspeople (www.visualarts.net.au/shop/products/premium-plus);
- **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).

In deciding whether to join an umbrella insurance scheme you should make your own inquiries as to the suitability of the scheme for you.

To form an effective lobby, you or your association would need to present your risks in such a manner that you appear commercially viable to the insurer. One way of doing this is to present full information about your specific risks as well as indicating the numbers of practitioners who would purchase the insurance. It would also be necessary that all members of the lobby adhere to minimum standards of practice – this can be implemented through processes such as professional accreditation, risk management strategies or industry codes of practice. It would be worthwhile to contact arts organisations that have been successful in negotiating umbrella policies to gain from the experience, and/or use the services of an insurance broker.

3.4 Stamp duty exemption

Stamp duty is a tax that is payable on insurance policies. The cost depends on the type of policy, and the state in which the policy is entered (for example, stamp duty on public liability insurance policies has been abolished in Tasmania, and Queensland exempts not-for-profit organisations). You usually pay stamp duty as a component of the premium costs you pay to your insurer.

Certain organisations, such as educational and charitable organisations, can apply to the Commissioner of Stamp Duties to have their organisation exempted from stamp duty. This exemption is difficult to obtain but it is worth looking into, as stamp duty can prove to be an expensive burden.

To find out if your organisation is eligible, you should contact the Office of State Revenue in your capital city – contact details are at the end of this chapter.

3.5 Charitable status

For tax purposes, being recognised as a charity under the tax law can provide benefits. Many arts organisations are non-profit, in that they are established to showcase the arts and do not have a dominant purpose of making a profit. But this alone does not make an arts organisation eligible for charitable or Public Benevolent Institution (PBI) status.

Benefits that allow an arts organisation to maximise funding – such as exemptions from stamp duty on insurance contracts, donations, and refund of GST imputations – are spread across Commonwealth and State and Territory laws. The Australian Taxation Office (ATO) administers and regulates charitable and PBI status and has a range of publications to help understand this often-confusing area of law. See definitions later in this section for clarification.

Currently the ATO has a quick reference for what a charity is:

- it exists for the public benefit (other than where the charitable purpose is the relief of poverty)
- it has a charitable purpose
- it is non-profit.

Charitable status at a Commonwealth level provides the following benefits:

- income tax exemption (if endorsed as an income tax exempt charity)
- GST imputation credit refunds
- Fringe Benefit Tax (FBT) rebate

Charitable status at a state or territory level may provide the following benefits:

- exemption from stamp duties for insurance, property transactions and motor vehicle registration
- pay roll tax
- land tax exemption

A Public Benevolent Institution (PBI) is a charity whose “*main purpose is to relieve poverty, sickness, suffering or disability*”. PBI status is different from charitable status. PBI status at a Commonwealth level provides the following benefits:

- GST imputation credit refunds
- FBT exemption
- Deductable Gift Recipient (DGR) status

If you want to register your organisation as a charity, you will need to do so with the Australian Charities and Not-for-profits Commission.

3.6 GST and Insurance

The Goods and Services Tax (GST) is payable on all insurance policies regardless of whether you have an Australian Business Number (ABN) or not. The GST should not be confused with Stamp Duty, which is a State or Territory tax.

The GST, which came into effect on 1 July 2000, has a tax rate of 10% on most goods and services. The GST affects most businesses, even not-for-profit associations who must collect the GST where they charge for goods and services: such as selling pottery or a painting, or ticket prices for a theatre performance. The money that you collect as GST you are liable to repay to the Commonwealth government.

Individuals or businesses that are registered for GST, and take out insurance policies, will be entitled to claim input tax credits for the GST included in the insurance premiums. Put simply, the money you pay out for GST (say on an insurance policy) can be offset against the GST revenue you collect (say for selling a painting) – the difference is what you owe the government. Talk to your Accountant and keep your records up to date.

Contacts:

Australian Taxation Office: www.ato.gov.au; Tel: 13 28 66 or PO Box 9935 in your capital city.

For State and Territory stamp duty:

NSW – Office of State Revenue www.revenue.nsw.gov.au/

QLD – Office of State Revenue www.treasury.qld.gov.au/taxes-and-royalties/

VIC. – State Revenue Office www.sro.vic.gov.au

SA – Revenue SA www.revenuesa.sa.gov.au

TAS. – State Revenue Office www.treasury.tas.gov.au

WA – Office of State Revenue Department

www.srd.wa.gov.au ACT – Revenue Office

www.revenue.act.gov.au

NT – Territory Revenue Management www.revenue.nt.gov.au

4. PROVIDING FOR YOURSELF AND OTHERS WHEN YOU ARE UNABLE TO WORK

The freelance nature of many artists' work patterns means that if an injury or accident prevents you from working, you may find yourself left with no protection. Think about what would happen if you were forced to take months or, in some cases, years off work because of a work accident or an unexpected illness. The costs of providing for yourself and keeping up with medical expenses can be huge, let alone the mental challenges it can bring.

That's where insurance can help. There are a variety of insurance options out there that can help cover these expenses should this happen to you.

This chapter looks at what options you have that can provide for you in the event of illness or injury.

4.1 Workers' compensation and who is covered

Employers are required by law to take out workers' compensation insurance to protect their workers. This is a type of insurance that covers medical expenses and loss of income for workers injured on the job. It is designed to compensate you if you are unable to work.

In many freelance employment situations, it can be difficult to determine whether an individual is classed as a 'worker' under the law to be entitled to receive workers' compensation. This can be particularly true for arts workers who could find the law considers them 'independent contractors' rather than employees and not eligible for workers' compensation.

The legal definition of 'worker' varies in each state and territory and can be quite complex. Due to this, you should seek legal advice before you rule yourself out of accessing workers' compensation. We've set out a brief guide to work out if you are covered by workers' compensation and the laws surrounding it.

Note: If you are an employee of an Australian government agency or certain national companies, a separate system of workers' compensation may apply known as 'Comcare'. For specific information, contact the WorkCare or WorkCover Authority in your state (contact details are listed in section 4.1.8).

What sort of injury can an individual claim for?

To receive workers' compensation, you must show that:

- (1) You have sustained an injury or illness that arose out of or in the course of employment (i.e. was work-related); and
- (2) As a result, you have suffered some loss in terms of expenses incurred (such as medical expenses) or loss of earnings due to your injury.

Generally, a link must be established between your incapacity for work and the work injury.

Injury has a broad meaning and includes physical and mental injury. Diseases caused by employment (also referred to as industrial diseases, such as asbestosis) are regarded as injuries.

If the injury was caused or contributed to by your own deliberate misconduct or recklessness, you may be refused workers' compensation.

What does workers' compensation entitle you to?

- Weekly payments to cover lost wages (how long you can receive payments for varies between states and is usually calculated according to the worker's average earnings and their capacity to work)
- Medical, hospital and nursing expenses
- Lost superannuation entitlements
- Rehabilitation, counselling and other support services
- A lump sum impairment benefit in cases where the worker has suffered permanent impairment

Eligibility for cover

People eligible for workers' compensation are *workers who are injured at work*. What it means to be "at work" can be quite technical and differs depending on which state or territory you are in. Travel to and from work is not always covered.

As an individual, working out what the nature of engagement is between you and your employer is crucial to knowing whether you are covered for accidents occurring at work.

Typically, employers are only required to take out workers' compensation insurance when there is:

- (1) A contract of engagement (although this doesn't have to be a written agreement); and
- (2) A person meets the definition of 'worker' subject to their state or territory's laws.

Generally, employees who work full-time, part-time, and casually are entitled to workers' compensation. Independent contractors or sole traders are usually not. However, in some cases, a contractor may be entitled to receive workers' compensation if they meet certain criteria under their state legislation.

Contractors vs employees – who is eligible for cover

Employment relationships are not always clear cut. Whether you are considered a contractor or an employee under the law may determine if you are eligible for workers' compensation. The law can be quite technical on this distinction, making it especially hard for independent artists or freelancers to work out what category they fall into.

In determining if someone is a contractor or an employee, the law will look at what the terms of the contract are between the parties. The contract does not need to be written down. It can include terms and conditions that were agreed to in conversation. This includes factors like:

- Is the contract valid?
- What are the rights and obligations that are set out in the contract?
- Are the rights and obligations like those of an employment relationship? For example, is one person in control over how the work is completed? If so, how do they exercise that control?
- Who arranges the tax payments in the relationship?
- Who owns the tools or equipment needed for completing the work?
- Who assumes work-related risks that occur when undertaking work?
- Who maintains control over the work that is being done?–
- Are you entitled to work for other parties?
- What are the intentions of each party?

For instance, if you are an independent solo performer or a band of musicians, you are generally considered to be self-employed and fall into the category of independent contractor. This means you typically won't be entitled to receive workers' compensation. One way to work around this is to

consider setting up a servicing company – see section 4.1.6 for more on this.

In cases where you have a regular contract with a venue owner, or a hirer has control over what you do and when you do it, you are more likely to be in an employment situation.

In the case of a visual artist working on a mural or a writer working on a publication, the status of engagement depends on the contract. If there is a clear employer/employee relationship in the contract, the employer will then be required to take out workers' compensation insurance for the period.

To avoid any confusion, it is a good idea that before you enter into a work arrangement to ensure there is a written contract for your job, including if you are eligible for workers' compensation insurance. If there is no mention in the contract of workers' compensation, you may need to obtain separate cover.

If you are still uncertain whether you are an employee or a contractor, contact your state or territory WorkCover or workers' compensation authority or get legal advice.

Employment for a specific project

If you are employed for a specific short-term project, the Arts Law Centre recommends you use a written agreement that covers workers' compensation insurance among other things. A sample clause of this is:

Insurance

The Employer agrees to take out and maintain a Workers' Compensation Insurance Policy in favour of the Artist.

The Employer agrees to take out and maintain adequate public liability insurance cover.

The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment.

Workers' Compensation for Self-Employed Workers – Setting up a Service Company

If you don't have an employer but wish to receive the benefit of workers' compensation you could consider setting up a servicing company with fellow artists. This can be a good option for groups of artists, musicians or performers who are not employed by a company (i.e. self-employed) but still wish to receive workers' compensation cover.

A servicing company acts as your employer for insurance and other purposes. This is considered a separate legal entity that can "employ" you to perform the work.

To establish a service company, you need to set up a limited liability company through the Australian Securities and Investments Commission ("ASIC").

A further option would be to set up an Association. Each state and territory has its own laws on what it means to establish an Association in their jurisdiction. This is generally a cheaper option than forming a service company as it avoids the need to pay fees charged by ASIC. However, one drawback is that it's state-based which may not suit you if your job sees you working around the country. We recommend you seek your own legal and taxation advice to assist you with the option most suitable for you.

What sort of cover can an employer purchase?

Workers' compensation insurance premiums are calculated in different ways and cost different amounts from state to state. As a general rule, the more expensive the type or value of the work you do, the higher your insurance premium will be.

The cost of insurance also depends on a number of factors, including:

- Type of business activities
- Number of employees
- Gross yearly wages
- Claims history
- Length of time that the business has been established

Further information about insurance premiums can be obtained from the relevant workers' compensation body in the relevant state or territory.

Contacts

Here is a list of the workers' compensation bodies across Australia:

- Commonwealth – www.comcare.gov.au
- ACT – www.worksafe.act.gov.au
- NSW – www.workcover.nsw.gov.au and www.wcc.nsw.gov.au
- Northern Territory – www.worksafe.nt.gov.au
- South Australia – www.rtsa.com
- Tasmania – www.wst.tas.gov.au and www.workcover.tas.gov.au
- Victoria – www.workcover.vic.gov.au
- Western Australia – www.workcover.wa.gov.au

Injured workers can receive legal advice on workers' compensation from some state or territory legal aid commissions, or from a community legal centre, private solicitor, or a union (if you are a member).

4.2 Income Protection Insurance

If you are unable to work and don't have sick leave or workers' compensation insurance, one option worth considering is income protection insurance. Income protection insurance is designed to support you if you are no longer able to work or your earnings drop because of sickness or injury. This can be beneficial for freelance workers who are self-employed and do not receive entitlements such as sick leave or workers' compensation. It can also be important if you have family members reliant on your income and have regular payments like rent or a mortgage that you would otherwise be unable to meet if you were forced to take time off work.

Income protection insurance aims to replace your previous income (commonly 75% of your gross salary). To be eligible to receive cover, you ordinarily need to show that you are partially or totally unable to work.

The amount you may be paid under this type of insurance is typically based on your annual earnings in the 12 months preceding the illness or injury. You may wish to obtain some advice from an insurance broker who can advise whether your average work patterns (e.g. if you are an actor who earns 3 x \$15,000 lump sums over the year for three years) are sufficient to qualify for income protection insurance.

4.3 Life Insurance

If something happened to you and you were no longer around, life insurance can offer you peace of mind in knowing your loved ones will be financially supported. This type of insurance covers you so that if you die, a sum of money will be paid out to your dependants. This can provide a financial safety net and help with things like covering your family's living expenses, paying off a mortgage, funding a dependant's future education, and even cover any final expenses like medical bills or funeral costs.

Also known as 'death cover' or 'term life insurance', this money will go to the people you nominate as beneficiaries on your policy. The cost of life insurance varies depending on the insurance provider and the following factors:

- Type of cover
- Health and lifestyle
- Occupation
- Age
- Policy features
- How much money you wish to be covered for (known as the 'Sum insured' or benefit amount)

As with income protection insurance, there will be exclusions that may apply.

Your superannuation policy may already provide you some cover for life insurance. However, the life insurance in your superannuation policy might be limited and include various exceptions. For this reason, we recommend you speak with your superannuation provider and/or an insurance broker to understand the extent of any cover. If you are unsure whether your super includes life insurance check with your super fund.

4.4 Total and Permanent Disability (TPD) cover

This type of insurance assists in the case of permanent disability that prevents you working ever again. The cover will usually pay you a lump sum to cover medical costs, any debts you may have, as well as your future expenses. TPD insurance varies from insurer to insurer and can be taken out with a life insurance policy or as a stand-alone policy.

4.5 Trauma Cover

Also known as 'critical illness cover' or 'recovery insurance', trauma cover will protect you if you are diagnosed with a specific illness or injury. Sometimes called 'critical illness cover' or 'recovery insurance', these policies include the major illnesses or injuries that will make a significant impact on your life, such as cancer or a stroke. While similar to TPD insurance, trauma cover is designed to help with the costs of your recovery so you can eventually return to work.

4.6 Financial assistance from Centrelink

If the worst happens and you aren't covered by insurance, you may be entitled to claim income support payment from Centrelink.

The following payments are income support payments:

- [Disability Support Pension](#), you may get this if you have a permanent physical, intellectual or psychiatric condition that stops you working
- [Age Pension](#), you may get this if you're 66 or older
- [Austudy](#), you may get this if you're 25 or older and studying or an Australian Apprentice
- [Carer Payment](#), you may get this if you care for someone who has a severe disability, illness, or is frail aged
- [JobSeeker Payment](#), you may get this if you're between 22 and Age Pension age and looking for work
- [Parenting Payment](#), you may get this if you're the main carer of a young child
- [Special Benefit](#), you may get this if you're not eligible for any other income support from Centrelink.

There are also allowances available as income support payments:

- [Farm Household Allowance](#), you may get this if you're a farming family in financial hardship
- [Youth Allowance](#) you may get this if you're 24 or younger and a student or Australian Apprentice, or 21 or younger and looking for work.

You can find out more about this by visiting the Services Australia website. If you have problems claiming a Centrelink payment contact an Economic Justice Australia community legal centre <https://www.ejaustralia.org.au/legal-help-centrelink/>.

4.7 Superannuation

Superannuation or 'super' is money put aside over your working life for you to live on when you retire from work. In Australia all employers are required to pay money into a super account on behalf of their employees. For most people who are "traditionally" employed their employer will have been paying super for them since they started working.

For artists and creatives however, the nature of their work often means whether you should be being paid super can be a grey area. For some art workers, the company engaging you may need to pay your super. However, for others who don't have an employer, responsibility for making super contributions can fall on the artist themselves.

Even if you are self-employed, it's a good idea to set a little bit of money aside regularly to ensure that when you retire you are benefiting from the same financial security as those who are "traditionally" employed.

This section sets out how much super you should be paid and who should be paying it based on your circumstances. We also address some common issues that come up when talking about super, like what super fund to pick, what salary sacrificing is all about, why it's not so great to have heaps of super accounts, and things to keep in mind come tax time.

How much super should you pay?

Currently employers need to pay 11.5% of what's known as an employee's 'ordinary time earnings' (OTE) into a super account. If an individual is a contractor, this would mean the entity engaging them needs to pay 11.5% of the total earnings they are anticipated to receive under the contract.

OTE is different to a person's salary or wage. The ATO provides the following definitions to identify between the two:

OTE	<i>the amount you pay employees for their ordinary hours of work enclosed in the relevant agreement/award/contract, including things like commissions and shift loading.</i>
Salary and Wages	<i>amount that you pay employees inclusive of overtime payments or other payments that are not included in the agreement/award/contract but are obliged at law to pay</i>

For example, Allison is engaged in a contract with Lee to perform a dance for his company, and under the contract her expected 'OTE' is 6 hours at \$30 per hour excluding GST.

Lee then needs to pay super of 11.5% of Allison's earnings (11.5% x \$180). This works out to a super contribution of \$20.70 into Allison's superannuation account.

Who pays your super?

If you are **employed by a company**, then the company (as your "employer") is required to make super payments on your behalf. This applies if you have set up a business registered as a company for tax purposes. If you think your employer does not contribute to your super, it's worth bringing it up.

If you are a **contractor** then you may be eligible for employer contributions to your super, however this depends on the nature of the working arrangements and the structure of the contract. If this applies to you, we recommend visiting the Australian Tax Office's [website](#) or calling them to work out if you should be getting your super paid by an employer.

If you are part of a broader artistic **agency** which organises contracts on your behalf, you will likely be 'employed' under that agency. In this event, they superannuation will be required to be paid by the agency to you.

If you're a **performer or provide services in connection with performances, film, TV or radio** you may be deemed to be an employee for superannuation purposes. If this is the case, the company engaging you will therefore be responsible for making super contributions on your behalf.

If you work as a **freelancer or sole trader** then you are responsible for making any payments towards your super. Because you fall outside the definition of 'employee', there is no minimum amount you are required to set aside. However, it is a good idea to try and pay yourself the same amount you would receive if you were traditionally employed (currently 11.5%) so you have money set aside for when you retire.

If you are still unsure about who should be paying your super the ATO has a [handy tool](#) to help you work this out.

What happens to your super money?

While your super waits for you to retire, it is managed by a Superannuation Fund. This is a fund that collects all the money paid into it and invests it in things like shares, property, and managed funds.

When you start working for an employer, they usually ask you if you wish to choose a fund for your super to be paid into. If you don't choose a super fund, your super contributions will be paid into a fund nominated by the employer.

Beware of having multiple super funds set up

If you work for different employers (or previously have) and have not provided details of your chosen super fund, you may find you have multiple super funds running in your name. This can be common for artists who work on multiple projects. However, it should be avoided. If you have multiple accounts running, you are likely paying a lot more in fees that you would be if you just had the one account. You may even find that you're paying for several versions of unnecessary death cover or life insurance when you only need one insurance product.

The good news is it is relatively straightforward to consolidate your super into the one account. Read on for more on how to do this and how to find a super fund that's right for you.

How to pick up a superannuation fund

There are a lot of super funds out there on the market which can make picking one overwhelming.

It is worthwhile to spend some time comparing the products so you can choose a fund that suits your needs. There are a few key things to consider when comparing super funds, including:

Fees	How much is the fund charging you to administer the account for you? Take note of how much this is and see if there is a cheaper option out there.
Investment options	Make sure there are options that suit your needs and comfort with risk.
Extra benefits	An employer may pay more than 11.5% for certain super funds or if you make extra contributions yourself.
Performance	Select a fund that has performed well over the last 5 years, do not chase last year's best performer
Insurance	See what cover is available and what it will cost. If you already have a separate, stand-alone life insurance policy you probably don't need to pay for it under your super account.
Service	Call the fund or check out their website to see what other services they offer.
Industry	Check if the fund offers suitable options for the industry that you work in.

You should be able to find information on fees, investment options, benefits and performance on the super fund's website or by calling the super fund. We recommend checking out super comparison websites as well as the ATO's [website](#) to find out more on the different funds out there.

Industry Super Fund: Media Super

If you are unsure which superannuation fund to choose, one option would be to register with your industry-based fund. For the arts industry the relevant superfund is Media Super. Media Super is the only super fund dedicated to the print, media, entertainment, arts and creative industries.

For more information, please refer to their website: Media Super.

Again, we would recommend that you research which superannuation fund is the right one for you and seek advice.

Changing Superannuation Funds

There are various reasons people may wish to change their super funds. As mentioned earlier this may include consolidating your super into the one account to reduce fees and make things a little easier. Other reasons might include investing in a fund with better services. Or even getting out of a fund that has performed poorly in the last 5 years compared to similar funds.

If you are thinking about transferring your super, check:

- If changing funds will affect how much your employer contributes
- The impact on your retirement benefit if you are in a defined benefit fund
- That you have notified your employer to make future contributions to your new fund
- That you are not losing insurance benefits you want to keep (such as life insurance, income protection cover or TDP insurance)
- The exit fees of your old fund
- Whether your new fund charges contribution fees

You can change super funds by:

- Asking your super fund for a rollover form, filling this out and sending it to your new fund; or
- logging on to your MyGov account and changing your rolling over your account.

If using the rollover form you need to provide proof of identity to transfer to another fund. This protects your super from being unlawfully transferred by someone else.

Keeping Track of Your Superannuation

Keeping track of your super can be tricky if you work on different projects or are engaged by different people.

You can check and manage your super by creating a myGov account and linking to the ATO. You can then:

- see details of all your super accounts (including any you have lost track of);
- find lost super held by super funds that you can rollover into a super account of your choice;
- find ATO-held super – if the government, your super fund or your employer cannot find an account to transfer your super to, the ATO holds it on your behalf;
- combine multiple super accounts by transferring your super into your preferred super account – before consolidating, check you will not lose valuable insurance.

Accessing your Super

As super is designed to support you in the future, you normally can't access your super before retirement.

If you do wish to access your super earlier, there are limited circumstances in which you can do this. This can include compassionate grounds like medical treatment or cases of severe financial hardship. You may also be eligible to access your super before retirement if you are leaving Australia permanently.

Withdrawing your super early is a big financial decision and shouldn't be made lightly. It can leave you with less money for retirement and impact your insurance within super. It's worthwhile seeking financial advice before you do this. If you do wish to access your super early, visit the ATO [website](#) to find out more about how to do this and speak with your super provider.

Superannuation Complaints

If something has gone wrong with your super or you feel you've been treated unfairly - don't suffer in silence. Making a complaint to either the ATO or your super fund (depending on the situation and who you think may be at fault) can help fix the situation.

The following are examples of situations that may happen where you should raise a complaint:

- employees who think super hasn't been paid
- advice you were provided about a superannuation product
- fees or costs that were incorrectly charged or calculated (not fees or costs that you think are too high)
- information you weren't given about the product, including fees or costs
- errors in information provided to you; for example, if your benefit statements are incorrect
- an unreasonable delay in paying a benefit
- if you have given instructions (i.e. switching investment options) and they were not followed, or
- transactions that were incorrect or unauthorised.

5. PUBLIC LIABILITY AND INSURANCE FOR VOLUNTEERS. ARE YOU COVERED?

5.1 What is public liability insurance?

Public liability insurance is typically designed to cover you and your organisation for circumstances where a member of the public is injured, or suffers property loss or damage, as a result of your actions, or those of your employees. In some cases, this may cover the actions of volunteers in your organisation. This chapter considers insurance for volunteers in the context of its focus on public liability insurance generally.

If the injured person brings a claim against you or your organisation, public liability insurance typically provides cover for:

- compensation you may be liable to pay to the injured person (and their legal costs); and
- legal costs incurred from defending or settling the claim.

Do you/your organisation need to have public liability insurance?

Why would you / your organisation need to have public liability insurance?

As an artist or arts organisation, there are situations when you will have a duty of care towards the public and the volunteers who work for you. This means you have a legal responsibility to take reasonable steps to ensure the safety of others and their property.

When:

1. there is a duty of care; and
2. that duty of care is breached by a negligent act (or failure to act), and
3. this causes injury or death or damage to property,

a claim for damages can arise. In some instances, you may even be liable for a negligent act/failure to act even if you are not at fault.¹

For example:

- The promoters of a rock concert could be liable if poor crowd control causes injury to a concert attendee at the venue;
- A sculpture studio could be liable if a student in class is injured from using a poorly maintained tool; and
- A museum could be liable if a visitor is injured from falling through a barrier that was not properly installed.

As claims for personal injury damages can run into millions of dollars, it is a good idea to have public liability insurance. If you are uninsured, your personal assets may be at risk if a claim against you succeeds. If you engage or deploy volunteers in your organisation's activities, you will want to consider insurance products that specifically cover your volunteer workers.

How much public liability cover do you need?

The amount of public liability insurance you need will depend on your activities and/or on the statutory obligations that exist for your organisation. Standard broad form policies regularly offer public liability cover of up to \$20 million for each occurrence.

If you wish to cover the acts of your volunteers as well as your employees, this needs to be specified in the insurance policy.

Make sure you specify clearly to your broker what risks you need to be covered for, and check that the limits of cover are enough. If you communicated what you need, but you later find that your policy is lacking in areas, you may be able to claim against your broker for negligent advice.

What do public liability premiums usually cover?

The premiums for public liability insurance are calculated according to the risks or activities you undertake, which must be presented to your insurer as accurately as possible. For example, if you have a relatively safe studio which is open during one month of the year, you are likely to pay a smaller premium for the same amount of cover than a studio which is open all year, has classes of 20 people five times a week, and sits on top of two flights of rickety stairs!

If there are any risks that your activities could present, make sure you let the insurer know!

Be aware that many public liability insurance policies **exclude** certain claims. The extent of what is excluded depends on the policy wording. However, public liability insurance generally does **not** cover:

- Claims arising out of a breach of a contract you or your organisation have entered into (unless the liability would have arisen without the presence of the contract);
- Claims where the damage was caused on purpose or due to illegal activities (for example, if a band incites a riot which causes audience members to be injured);
- Punitive or exemplary damages (these are costs awarded on top of compensation, intended to punish a defendant for outrageous conduct).

Other common excluded claims can be covered by alternative insurance outlined in the table below:

What's Not Covered	Alternative methods of covering these claims
Injuries to employees within your organisation	<ul style="list-style-type: none"> • Obtain a special endorsement on your policy; or • Obtain separate workers' compensation insurance
Injuries to volunteers working for your organisation	<ul style="list-style-type: none"> • Obtain a special endorsement on your policy; or • Obtain separate personal accident or volunteer injury insurance (see 5.6 below)²
Damage to property in your organisation's custody or control	<ul style="list-style-type: none"> • Obtain a special endorsement on your policy; or • Obtain separate building and contents insurance
Negligent advice or negligent provision of some other service	<ul style="list-style-type: none"> • Obtain separate professional indemnity or directors and officers insurance (see 5.7 below)
Injury to yourself due to your own negligence	<ul style="list-style-type: none"> • Obtain separate personal accident or injury cover

Being able to obtain affordable insurance can be challenging for small to medium sized operations. If you're having trouble obtaining public liability insurance, the Insurance Council of Australia offers the following suggestions:

- Explore options of risk management;
- Pool your risks with others;
- Find similar organisations that have insurance;
- Seek advice from an insurance broker;
- Contact the Community Underwriting Agency.

5.2 When are you covered by someone else's public liability insurance?

A claim arising from one incident will often involve multiple parties. For example, if you are the tenant of a building and a visitor falls through a hole in the floor, the landlord's failure to repair the hole may be partly deflected to you as the tenant if you did not inform the landlord of the need for repair.

If you are hiring a venue for an event, typically, you will not be covered by the venue owner's insurance for accidents that occur due to the negligence of your own employees or volunteers. Accidents caused by any dangers on the premises may be covered under the venue owner's insurance, but that cover is typically limited to the venue owner's liability only and often your own activities would require separate cover.

If you are in a band or theatre company hired for a concert or event, you should not assume you are covered by the venue owner's or event organiser's insurance. Ask the owner or event organiser whether you are covered. If you are, it is better to negotiate this cover in a contract with them and get it in writing! If you are not, you should try to secure your own insurance. It is a good idea to arrange your own insurance anyway.

Be clear on what your policy or insurance company allows before you agree to cover someone else with your insurance. If you do not, you may find that such an agreement voids your insurance. If in doubt, ask, take notes, and keep records of the conversations you have with others.

5.3 What is the claims process?

A claim may arise when an individual suffers an injury (physical or psychiatric) in an area or due to the actions of someone which is in the control of a venue operator. Once a claim has been received, it should be immediately forwarded to your public liability insurer seeking coverage in defending the claim under your policy.

The public liability insurer will consider the claim and may respond to it through an internal 'claims handler', or brief lawyers to act on an individual or organisations behalf in defence of the claim. The first thing that the insurer or briefed lawyers will consider is whether the negligence of the person or organisation caused the injury.

Each state and territory has enacted legislation to limit the likelihood a person or organisation will be found liable for negligence and has set limits to the amount paid in damages. These pieces of legislation largely reflect the common law principles of negligence and include some limitation of duties. The legislation may also increase an injured person's responsibility for their own harm (e.g. intoxication as a factor).

Most public liability claims will be resolved informally, rather than in front of a judge in the court, because it is commercially cheaper (for both parties, i.e. the injured party and you) to settle a claim rather than testing the legislation and running risks in front of a judge.

5.4 Should you provide a risk warning?

There have been legislative attempts to transfer liability risk through use of 'risk warnings', to a participant where a person is engaged in a recreational activity through the use of a 'risk warning'.

The New South Wales legislation provides:

Section 5M of the Civil Liability Act 2002 (NSW)

A person (the defendant) does not owe a duty of care to another person who engages in a recreational activity (the plaintiff) to take care in respect of a risk of the activity if the risk was the subject of a risk warning to the plaintiff.

...

For the purposes of subsections (1) and (2), a risk warning to a person in relation to a recreational activity is a warning that is given in a manner that is reasonably likely to result in people being warned of the risk before engaging in the recreational activity. The defendant is not required to establish that the person received or understood the warning or was capable of receiving or understanding the warning.

A risk warning can be given orally or in writing (including by means of a sign or otherwise).

A risk warning need not be specific to the particular risk and can be a general warning of risks that include the particular risk concerned (so long as the risk warning warns of the general nature of the particular risk).

Whether or not the person who is making a claim is involved in a 'recreational activity' may not be simple to answer. In some cases, attending a concert might be a 'recreational activity'. In other cases, say where a person is employed at a concert by someone other than you, they will not be engaging in a 'recreational activity'. So, while the participants may not be able to make a claim because of a risk warning, the risk warning may not cover others who are incidentally impacted by the activity.

Another matter to consider is whether your risk warning is specific enough. While the risk warning need not be specific, it must warn of the general nature of the particular risk which caused harm to someone. Be careful in placing too much reliance on risk warnings. It is essential to make sure you have public liability cover in case your risk warning fails to meet the legislative requirements. Otherwise, it is possible to also enter into a risk waiver for certain recreational activities. You may be aware that such a document seeks to release one party (such as an event organised) from any claim for damages for negligence from another party (such as an audience member). In legal practice, these notices and contractual terms may not totally protect you but may only assist in limitation liability. In order to be effective, they should be carefully crafted, be in writing, form part of your contract with the person participating in the activity and accompanied with evidence they have been explained carefully to prospective participants. If you are relying on a risk waiver, you should obtain specific advice on whether the waiver is sufficient; there are complex legal questions that arise under each state and territory's civil liability legislation and under the *Competition and Consumer Act 2010* (Cth) that will need to be considered in the context of your particular operation.

5.5 Is insurance required for volunteers?

Organisations that specialise predominantly in the arts are often heavily reliant on the goodwill and skills of volunteers who dedicate their time to the organisation. Volunteers require insurance coverage and protection similarly to those of paid staff and board members. Organisations have a responsibility to take out appropriate insurances for their volunteers and to provide the details of the insurance cover.

Public liability insurance for volunteers also covers situations where volunteers for your organisation are in a position where they cause injury or damage to your property, visitors or clients. It is important to ensure you check with your broker or insurer that your volunteers are named as insured persons under your public liability policy.

Personal accident and injury insurance for volunteer workers provides protection in the event of an accident or injury to a volunteer worker within your organisation. It is important that any insurance obtained covers:

- Medical expenses
- Wages lost from the volunteer's regular employment
- Lump sum payments for a permanent disability or loss of life.

This insurance is available from many insurance companies and is typically not expensive. Volunteering Australia lists Aon Australia as its approved insurance broker. Aon Australia provides Volunteer Worker's Personal Accident Cover which is arranged through Aon covering a volunteer's lost income as a result of their injury which you may be required to pay whilst the volunteer recovers, as well as lump sum benefits if the volunteer is permanently and seriously injured.

5.6 Are Directors and Officers in Non-Profit Organisations protected?

A company is a distinct legal entity, and for companies limited by guarantee (the usual type of non-profit organisation) the extent of each individual member's liability is limited to the amount undertaken to be contributed to the assets of the company in the event of it being wound up. Therefore, when an accident occurs on the premises of an arts organisation that is incorporated, it will be the company or the incorporated association rather than the directors or committee members who a claim is lodged against by an injured person.

The Corporations Act 2001 (Cth) outlines a number of directors' duties including:

- To act in good faith and for a proper purpose
- To act with care and diligence
- To avoid improper use of information
- To avoid improper use of position
- To disclose certain interests

A director may also be found personally liable for the debt a company incurs if the company is insolvent at the time and the director knew or suspected the company was unable to pay the debt. Accordingly, a director must familiarise themselves with the accounts and monitor the solvency of the company.

As a voluntary director of a non-profit organisation limited by guarantee, you may still be held personally liable for the debts of your organisation. Typically speaking, public liability insurance will cover directors for their "public liability" risks. However, it is very rare for a public liability insurance policy to cover a director or officer of a company for liabilities incurred as a director or officer (such as trading debts or solvency risks). To cover those risks, you will need to consider obtaining a

'Directors' and Officers' insurance policy or a management liability insurance policy. This form of insurance can be paid for by the company and gives an officer additional comfort that, if the company is insolvent, the officer can rely on the larger resources of an insurance company.

It is important to note that D&O or management liability insurance will only cover circumstances such as directors' negligence, claims for mismanagement (provided it is not wilful), personal claims for unfair dismissal (among others). You should discuss such forms of cover with your broker and get specific advice on the sufficiency of your protection. In addition, as a director, you should consider whether you require any of the following:

Coverage	Summary
Deed of access and indemnity	<p>These deeds attempt to rectify some of the limitation of indemnities and insurance and also seek to protect officers after they leave. Typically, these deeds will include:</p> <ul style="list-style-type: none"> • A personal indemnity from the company to the officer; • A requirement for the company to ensure it pays directors' and officers' insurance premiums and provides evidence of payment to the officer; • An obligation to provide officers with access to company documents so that officers can defend themselves if they are sued; and • A requirement to continue to comply with the above obligation for (usually) 7 years after the officer leaves the company.
Indemnities from the company	<p>The first level of protection for officers if they are faced with potential liability is an indemnity given to them by the company. Usually, the indemnity is set out. After some changes to the law in the mid-1990s, these indemnities are allowed to be quite wide and can cover liability for most negligent acts of officers.</p>

6. MAKING AN INSURANCE CLAIM

You now have the insurance policies you need and you're paying the premiums. Suddenly a disaster happens. For example, an electrical fire damages your office, or your hard drive has become corrupted and you've lost an important scene from your film or you have become victim to a cyber-attack. What should you do?

First, look at your policies and the promotional material from the insurance company. The requirements and specifications of the policy will determine whether, when, and how you file your claim. This information should also be available on the company's website and in the product disclosure statement provided by your insurer.

If you have purchased your insurance through a broker, contact them in the first instance as they may be able to expedite the claims process.

6.1 Should you file a claim?

Most insurance policies require you to pay an excess when making a claim. There is therefore sometimes a possibility that you will be better off not to file a claim. If you are claiming for an item that is not much above your excess on the policy (e.g. a \$1,200 photocopier, when your excess is \$900) it may not be worthwhile. Other things to consider would be whether your premium will increase because of the claim, or might you lose your no claim bonus? By way of example, if you have a 60% no-claim bonus, a claim could raise the premium by 125% the following year. You might find that it is worthwhile covering your own loss in this situation and keeping your insurance premiums low.

You can't, however, always assume you'll only have one claim in a year. For instance, if you have a couple of natural disasters in your studio within 12 months you may have been better off if you made both claims. No-claims specifications are sometimes contained in promotional material – not on the policy – so check carefully. No claims specifications are sometimes called 'no claims discounts' or 'no claims bonuses', conveying the sense that they function as a kind of reward for policyholders on the basis of their claims history. As the lower number of claims made will tend to benefit policyholders, it is thus important to consider the pros and cons of making a claim, and of course, to ensure that such provision is definitely a part of the policy (distinct from promotional material, as mentioned above).

If the damage or liability you are facing is severe you would normally ignore these considerations unless you had substantial assets to cover your loss.

6.2 When to file, how to file

Some insurance contracts set specific time limits on the filing of claims. Others include more general wording like "as soon as possible". These non-specific terms still require a prompt action, or what is seen as reasonable under the circumstances. Other policies, such as professional indemnity, require immediate notification of the event, otherwise your rights to cover under the policy could be prejudiced. This is also applicable for public liability insurance in which policies can oblige you to inform your insurance company of any event which *may* result in a claim whether a claim has been made yet or not. Workers' compensation time limits are set by legislation and thus vary from state to state but are, generally, applied generously.

The reason for compliance with these terms is the contractual nature of insurance policies. Non-compliance could entitle the insurer to deny your claim. If you have employees or volunteers who

need to report accidents or damage, ensure that they are aware of the procedures for reporting them promptly.

How to file?

A claim is usually made by writing to, calling on, or phoning the insurer, according to the specifications in the contract. In most instances you will be required to complete a claim form. We recommend that you keep a written record of all correspondence and conversations relating to the claim. This documentation may be invaluable if a dispute subsequently arises.

To substantiate the claim, the insured person must establish suffering, economic loss or damage, or that she or he is liable for damages to a third party. In the case of liability insurance, it will be necessary to show that the loss, damage or liability is covered by the policy.

Substantiation of damage to property will sometimes require proof of the value of the lost or damaged item. The requirements for valuation may differ for each insurance company. Some require “proof of purchase” receipts, while others require independent valuations. These valuations can vary enormously. An agreement as to the method of valuation may have taken place at the time of purchasing the insurance policy. The policy may have an “agreed value” or a replacement value. If you are insuring works of art or instruments which have differing values depending on how you view them i.e. replacement of materials or scrap value vs. “artistic value” of the work, it’s particularly important to establish a basis for valuation with the underwriter. Do this when purchasing the policy. It is often wise to maintain a photographic record of your special assets which you keep securely along with valuations from appropriate experts. In the worst cases, insurers may insist on restoration of damaged work, rather than compensating for its full value or they may want it for scrap value after damages have been paid out.

Keeping records

If you are making a claim, especially one that is not simple and straightforward, it is important to keep records. It would be prudent to open a file on every insurance product and note in a prominent place important information such as date of renewal, insurance company contract and details of policy. Dates of renewal should be diarised by relevant persons with reminders at least one month before the date of renewal. Simple file management procedures will help you manage your insurance. If there’s a possible court action or dispute resolution procedure involved, make sure that you keep full records of all correspondence between you, the third party and the insurance company. It is important also to make notes from any telephone conversations that take place, as they will be useful later on.

Remember to record the date and details of who you spoke to, as well as what you discussed.

6.3 What if a third party is suing you?

If you are sued by a third party, send all legal documents and correspondence to your insurance company immediately. Do not make any admissions and do not make a response unless approved by your insurer. Certainly do not agree to pay anything.

6.4 Does the insurance company have rights to your work?

In some areas of insurance it is possible for the insurance company to take possession of the damaged property after a claim is settled. Could this occur with a work of art? A textile artist Mona Hensing, surveyed for the first edition of this book, had made a claim on a badly damaged wall tapestry. The work was written off but was later put up for auction as her artwork.

It is something for the artist to guard against given the moral rights implication of having damaged works on sale or display. You should negotiate clearly about this at the time of claiming, if you did not do so when purchasing the policy. If in doubt – seek legal advice!

6.5 What if the insurance company disputes your claim?

The insurance company may dispute your claim in a number of ways:

Exclusion from policy

The insurance company may claim that the damage incurred is not covered by the policy. If the insurer is claiming an exclusion from the policy the onus is on them to prove that such an exclusion exists and that you were made aware of it at the time of purchasing the policy.

Cancellation of policy

A contract of general insurance usually contains a provision that enables the insurer and the insured person to cancel the contract. Under the *Insurance Contracts Act* (ICA) the insured must be given at least three days written notice of the proposed cancellation to enable him or her to find alternative insurance. Grounds for cancelling the insurance contract include failure to pay an instalment of the premium, failure to comply with the duty of utmost good faith or with the duty of disclosure, failure to notify the specified act or omission as required by the contract or where the insurance company is in liquidation. Furthermore, where the insurance contract is cancelled the insurer is required on request to provide written reasons for their actions – s75(1) ICA. If the contract is cancelled the insurer is usually not obliged to return the premiums paid by the insured prior to cancellation.

Avoidance of the contract

As discussed in Section 1.3 above, the insurer can no longer avoid a contract of insurance on the grounds of non-disclosure or misrepresentation unless these were fraudulent. If the contract is avoided, premiums must be returned.

6.6 Loss adjustment/delays in payment

Loss adjusters are appointed by insurance companies to assess damages. The duty of utmost good faith also applies to these insurance activities so liability for the right amount cannot be avoided in court. Delays in payment are dealt with under section 57(2) of the Insurance Contract Act which states that once payment is delayed beyond '*the day as from which it is unreasonable for the insurer to have withheld payment of the amount*', interest will be payable on the amount.

6.7 What can dissatisfied customers do?

The first step should always be to contact the insurance company directly. Not only may this result in a quick resolution to the problem it is also always a step required by complaint bodies before they will intervene. Most insurance companies will have their own internal dispute resolution procedures.

The Insurance Council of Australia's (ICA) Code of Practice (the Code) is a voluntary code which sets out the standards that general insurers must meet when providing services to their customers.

Firstly, check to see if your insurer is a subscriber to the Code. The Code states that if any complaints are referred to either the ICA or one of ICA's Service Suppliers about their conduct, then the Service Supplier will refer your complaint to the ICA. The ICA will then follow Part 11 of their Complaints Process in dealing with your complaint.

Part 11: Complaint – Making A Complaint

139 You may complain to us about any aspect of your relationship with us.

140 We will make readily available information about:

- a. your right to make a Complaint;
- b. our internal processes for dealing with Complaints; and
- c. our external dispute resolution provider...

If you are not satisfied with the result from your insurance company, you may want to seek legal advice or contact one of the following bodies, established to deal with insurance complaints.

6.8 Complaint bodies

Australian Financial Complaints Authority (AFCA)

AFCA is an independent, impartial, and free dispute resolution service to resolve complaints involving financial firms including general insurers. It is overseen by ASIC and is governed by the AFCA Complaint Resolution Scheme rules. AFCA replaced the Financial Ombudsman Service, Superannuation Complaints Tribunal and the Credit and Investments Ombudsman on 1 November 2018.

For complaints submitted after 1 January 2021, AFCA has jurisdiction to hear complaints up to \$1,263,000 (old value \$1,085,000) in most circumstances. The general time limit to make a complaint to AFCA is the earlier of the below two limits:

1. "within six years after the complainant first became aware, or 'should reasonably have become aware they suffered the loss
2. within two years of an Internal Dispute Resolution (IDR) Response from the Financial Firm."

Complaints process

- Check that your insurer is an AFCA member at the time you issue the complaint.
- Check AFCA has jurisdiction to hear your complaint, including that you are within the time limit and that your type of complaint can be heard. Further information regarding the types of complaints –AFCA hears can be found on their website: <https://www.afca.org.au/what-to-expect/complaints-we-consider>.
- Make sure you have first attempted to resolve your complaint directly with the insurer through their internal dispute resolution process.

- Lodge a complaint with [AFCA online](#). For assistance, you can also call AFCA on 1800 931 678.
- AFCA will consider your complaint, including what methods may be used to resolve the complaint. The dispute resolution method may be informal, such as conciliation, or formal, where there is a preliminary assessment and final determination. If the case is resolved formally and if the complainant accepts the AFCA's determinations, it will be binding on the financial firm. Remedies can include the payment of a sum of money or the meeting of an insurance policy claim, such as to repair certain property. If the complainant does not accept the determination, a claim can be made through the courts.

Legal Action

If you remain dissatisfied with the response from the insurance company and the complaint body then you can consider recourse to legal action. Before commencing legal action it is important to understand the possible legal actions and remedies, the costs involved and the time it will take.

If you believe that provisions in your insurance policy or representations from the insurance company, broker or agent have been misleading, you may find a remedy against them under sections 18 and 236 of the Australian Consumer Law within the Competition and Consumer Act 2010 (Commonwealth). There are also parallel consumer protection provisions at state and territory levels. In NSW and Victoria these are known as the 'Fair Trading Acts'. Where consumer protection legislation has been breached you can lodge a complaint with the relevant statutory authority, for example the Australian Competition and Consumer Commission (ACCC) administers the Competition and Consumer Act 2010.

Mediation of Disputes

Alternative dispute resolution such as mediation has gained popularity in recent years as a cheaper and quicker alternative to the court system. Mediation is a procedure whereby an independent person (the mediator) assists the parties to negotiate with each other and agree on terms of settlement. Although mediation costs can be expensive, sometimes the insurer will cover this cost. For further information, contact the Australian Disputes Centre, telephone 02 9239 0700 or visit their website <https://disputescentre.com.au/>. The Arts Law Centre also can organise mediation in certain instances.

Further reading:

Arts Law Information Sheet – Mediation Service, available at:–
<https://www.artslaw.com.au/services/mediation-service/>

Contacts:

Australian Financial Complaints Authority (AFCA)

Consumer line – 1800 931 678 (free call) Mon to Fri 9am to 5pm.

Postal Address – Australian Financial Complaints Authority Limited GPO Box 3 Melbourne, VIC 3001

7. VISUAL ARTS & CRAFT

If you are an artist earning a low income, insurance will often seem like a luxury that you can't afford, but it may be necessary to protect your livelihood. In addition, the sole trader status of many freelance artists and craftspeople means that they may not be able to get adequate insurance cover.

Reporting on the data about the affordability of insurance for artists is due for updating with a call for a new Myer report into Contemporary Visual Arts and Crafts being made in 2020. The 2002 inquiry found: *"some artists and arts organisation are unable to find insurers willing to offer appropriate insurance cover. Furthermore, due to the high cost of insurance premiums, many individual artists and arts organisations are unable to afford insurance cover."*

Creative Australia states that in 2021-22, the average gross income for practising professional artists in Australia was \$54,500 with \$23,200 from creative work. The average total income of artists is 26% below the workforce average. Only 9% of artists work full time on their creative practice.

In comparison, employees in other occupations earned higher median incomes of \$50,100 for all employees, \$73,400 for professionals and \$69,500 for managers.

In recent years, the cost of insurance has increased so that it now makes up a larger percentage of the funding or income of many artists and arts organisations. For some in the arts sector, the cost of insurance is their biggest concern and they don't have the option of being un-insured.

However, you can take steps to minimise risks or reduce your insurance costs. Before you take out an insurance policy and pay insurance premiums, ask yourself these questions:

- How can you change your activities to reduce risks and reduce your insurance premiums?
- Can you set aside your own money to pay for possible losses instead of purchasing insurance (also known as *"self-insurance"*) to cover risks?
- Is it financially better for you to make short-term savings on your insurance premium by having a higher excess, knowing you might have to pay out this pre-agreed excess amount if you make a claim later on?
- Can you negotiate with other artists as a group to get cheaper premiums and the advantage of policy packages?
- Can your organisation get stamp duty exemption?

The rest of this chapter will explore the important areas of insurance cover for visual artists, craftspeople and galleries.

7.1 What are the main areas of risk?

Studio and contents

For artists who work at home, a normal house contents insurance policy is not likely to cover work equipment. Extended household cover is available from a limited number of insurers. Guildhouse lobbied to develop a specific home/studio policy, which is now available throughout Australia. It includes cover for equipment and finished works, with additional transit and vehicle cover.

Accredited membership with Guildhouse includes an insurance package that covers the following areas of cover:

- public liability: covers claims made against your business by customers or the general public;

- products liability: covers personal injury or property damage caused by any product of your business;
- professional indemnity: covers the financial consequences of neglect, error or omission by your business;
- tenants' liability: provides a level of protection for your landlord's belongings;
- goods in physical and legal control: covers products customers purchased from you that are awaiting delivery or pick up, or may need to be repaired; and
- personal accident across Australia: covers physical or psychological harm caused by another party's negligence, intentional wrongdoing or recklessness.

Equipment such as computers, photocopiers and faxes can also be covered at home in a separate business policy if your existing household policy won't extend to cover it.

Contact Guildhouse for eligibility and pricing information for membership.

Commercial insurance

When your studio is not at home, you will require general property or commercial insurance. Some artists have had difficulties obtaining a suitable package.

However, there are many products available now which have been developed specifically for the Arts sector. You should be able to find the cover you require by clearly outlining the details of your activities, equipment, stock etc. to a broker who understands the needs of artists.

Public Liability

When you have customers visiting your studio/workshop/home to look at your work, you may be at risk of claims if, for example, a loose floorboard causes a fall into your cellar or a pot you are turning accidentally hits someone.

Similarly, if you hire a venue for showing your work or give classes in your studio or other venue, you need to consider public liability insurance. If you don't have your own cover and plan to rely on the venue's insurance cover, make sure you obtain a copy of the venue's insurance policy first. Ask your broker whether you are covered by the venue's policy and make sure you understand the extent of that cover. Do not just assume you will be covered.

If you are not covered and something you did caused damage to the venue or a visitor to the venue, the venue's insurer may seek to recover any loss suffered as a result from you. This is why it is important that you consider the insurance you need and obtain cover that will insure you from these types of claims.

Short-term public liability insurance can be very expensive. Make sure you obtain quotes from multiple arts insurance or community insurance groups and see what suits you best in terms of cover and premium costs.

Transit Insurance

If you are displaying your work at a gallery, you are not likely to be covered under the gallery's insurance for the transport of your work to the gallery. Transit cover can be tricky to obtain. Many transport companies provide it, but you should read any policy carefully to make sure you are getting the cover you require. Ask for a copy of the policy you are signing or download it if you are purchasing online (and ensure it is the correct version).

Valuations: artists beware

Valuation of lost or damaged items can be problematic for visual artists. It is difficult to determine the value of an item and insurance companies have differing criteria for assessing value.

Valuation of lost or stolen items will be almost impossible without photographic evidence. It is good practice to keep a photographic record of all items.

If an item is restorable, damages can be assessed as the cost of restoration materials plus the cost of the restorer's time. Be aware that if you are restoring the item yourself, an insurer may try to avoid covering this.

If an item cannot be restored, damages can be assessed at the commercial or market value of that item. This may be calculated on the cost price to the gallery or the artist's share once the dealer's commission is taken out following the sale of the item.

Life insurance/workers' compensation

If you are an employee, you will be covered by your employer's compulsory workers' compensation insurance. However, artists who work on a freelance basis may find that they have no protection for lost income if they are unable to work because of an accident at work.

If you are not in an "employment" situation, there are a few alternatives to consider. These are outlined in Chapter 4. These insurances are costly but are worth considering if you have financial obligations (such as a house loan or renting a studio or factory) that you would otherwise not be able to meet.

If you are freelance, uninsured and are injured while working and as a result lose your income for a period you may be eligible for Government assistance.

7.2 Insurance for galleries and arts organisations

Most arts organisations surveyed by Arts Law for this publication indicated that they had between 4 to 8 insurance products in any one year. This included the following:

Building and contents insurance

The building and its contents should be insured for fire, theft and burglary. This would cover office equipment, the building and fittings. Look at minimising risks through management methods (see Chapter 3). Plate glass insurance can be taken out separately in the case of gallery windows. Some landlords require the potential tenant to obtain this cover before agreeing to rent it to that tenant.

If your location is in a flood prone area, note that flood insurance is often excluded in standard policies.

Always read the fine print of your insurance policy to avoid any traps! One State-funded contemporary art space purchased contents cover without realising that the policy excluded protection for any show that was government funded.

Art insurance

Permanent collections can be insured against fire, theft and burglary. To obtain this cover, you will be required to provide details of the security in place to protect the collection. It's important to ensure you have full replacement value cover or you will not be appropriately covered. The replacement value must be determined by an expert.

If you are not fully covered, your insurance company may only pay a proportion of the loss as you will be treated as though you have personally assumed some of the risk.

For temporary or travelling exhibitions, insurance can be taken out for items on loan or in transit. Your loan agreement with the artist or other galleries should specify who is responsible for obtaining cover and the parties insured under it.

Workers' compensation

Compulsory workers' compensation insurance is required for employees (See Chapter 4) as well as superannuation contributions (see Chapter 4). If you have volunteers, you may take out sickness and accident insurance for them. For community-based (non-profit) organisations these can be obtained at reduced rates through community service bodies such as Community Underwriting.

Public and product liability

Public and products liability is considered one of the most important insurance covers for all businesses. It is designed to protect you and your business against claims or legal proceedings brought by third parties such as the general public (including your customers) for property loss or personal injury that occurred in connection with your business (including your employees), through your products or the business's premises. These claims can be for significant amounts of money.

You have a legal obligation to ensure the safety of your customers and the general public. If you don't, and they are injured and make a claim, you may be found to be responsible to them and personally required to pay them large sums of money for the loss they have suffered as a result.

Public and products liability insurance can cover you for:

- amounts you are required to pay as a result of claims;
- compensation for third party personal injury and/or property damage, arising as a result of an event in connection with your business; and
- legal proceedings, including lawyer's legal fees incurred in defending the claim.

Most public and products liability insurance policies will also include liability for damage to property under your physical and legal control.

In 2024, standard public liability policies offer limits of up to \$20 million.

You must carefully read your policy to ensure that:

- the policy covers you for claims made against you for third party personal injury and/or property damage and any amounts you are required to pay as a result of a claim; and
- the exclusions in the policy either do not apply to you or have a very low possibility of happening. For example, if you use chemicals when creating artwork or that may damage your artwork, then check to see if pollution damage or seepage is excluded as this is a common exclusion.

Check with your broker to ensure that you are covered based on the needs of you and your business.

Professional indemnity

Professional indemnity insurance is appropriate if you provide advice or services to customers. It protects you against claims by third parties for damages arising from following your advice or obtaining your services in the course of your business.

This means that if you do something (or don't do something that you should have) in the course of your work, or providing advice or services, and a customer suffers injury or financial loss as a result, they may make a claim against you. If you have the right policy, you may be covered by that policy and your insurer can appoint lawyers to defend you and/or your business against the claim and prevent financial loss.

You should seek advice from your broker or an insurance lawyer if you are unsure whether you require this cover.

Directors and officers

In recent times, government authorities have become more active in ensuring that companies, directors and officers are acting properly and to the necessary legal standards. Director and officers may be personally liable if they fail to comply with those legal standards.

Directors' and officers' liability insurance is designed to protect the assets of company directors and other individuals of a corporation against such claims.

Motor vehicle insurance

If you own a vehicle (or members and volunteers use their own vehicles on your behalf) you could be liable in the case of an accident. For example, if your art society organises a class for senior citizens, and one of the teachers arranges to pick up an elderly person each week, your vehicle cover may need to include third party property and personal injury. You need to outline the proposed activities and number of vehicles when you take out this cover.

Volunteers

Personal accident and injury insurance for volunteer workers gives protection when there is an accident or injury to a volunteer worker in your organisation. The policy should cover medical expenses, wages lost from the volunteer's regular employment, as well as lump sum payments or damages awards for a permanent disability or loss of life.

Public liability insurance protects the named organisation, paid workers and volunteers for their legal liability to third party property damage or personal injury. Cover should be organised to protect the paid workers and volunteers and cover them for any legal action against them from clients and other third parties. Some public liability policies do not provide cover for injured volunteers, which is why personal accident and injury insurance is necessary.

Employment for a specific project

If you are employed for a specific short-term project, Arts Law recommends that you have a written agreement that covers insurance.

When does a gallery protect the artist's work? Many galleries have insurance that protects your work while it is in the gallery. But don't assume this to be the case.

Arts Law recommends that artists and galleries have a written agreement. The terms of the relationship you have with the gallery is of great importance and is best set out and formalised in writing. Some galleries are reluctant to enter into written agreements, but artists should press for them. A gallery has an obligation to take reasonable care of the artist's work and is responsible

for any loss or damage to the work if they fail to do so. You should seek legal advice in relation to this agreement, but the following clauses (or equivalent) should be included in your written agreement:

The following clause should be included to cover the gallery's responsibility for insurance:

"Insurance and indemnity in relation to 'Works'

The Gallery:

- (a) will maintain adequate insurance cover against loss, damage, theft and destruction of the Works for the period of the agreement;*
- (b) will ensure that such insurance is for a sum not less than the agreed value of the Works;*
- (c) acknowledges the "agreed value" of each Work as being the retail price as evidenced by the receipt provided to the Artist upon delivery of the Works to the Gallery;*
- (d) will promptly notify the Artist if any of the Works are lost, stolen or damaged;*
- (e) will promptly pay the Artist the agreed value of the Works minus commission if any of the Works are lost, stolen or irreparably damaged;*
- (f) will promptly pay the Artist the reasonable costs of repairs to the Works or, if the Artist consents to the Gallery making the repair, repair the Works to the Artist's satisfaction if any of the Works have been damaged and are repairable; and*
- (g) will maintain appropriate public liability insurance cover and indemnify and keep indemnified the Artist for all claims, actions or legal proceedings that arise out of injury or death to any third party from use of, or in connection with, the Works."*

Despite taking precautions by including the above clauses in agreements, galleries may still seek to avoid payment as it can affect their insurance premiums (if a claim is made). One gallery refused to claim on its insurance contract for the cost of an item which had been "lost in the post" during return to the artist's home. The gallery denied that this event was covered by its insurance, even though there was a clause in the agreement to that effect. Artists should seek legal advice in such circumstances.

Theft

If you have a gallery/artist agreement, check if the gallery would be responsible for theft or damage. If the conditions are not satisfactory you should ask to see if they will agree to change the relevant clause to cover you for theft or damage.

In an Artist-Gallery Consignment Contract a clause should read:

"Damage, Theft, or Loss

If work is lost, stolen, damaged or destroyed whilst it is under the control of the gallery, the gallery shall notify the craftsperson immediately and shall be liable to pay him/ her the stated retail price less the commission."

Conclusion

Whether you're an artist or a gallery owner, it's important to recognise the advantages of shopping around to find the cover you require. In the visual arts area (more than many others), results are

achieved by finding a sympathetic broker who recognises your needs. As the Guildhouse example shows, a group lobbying can be very productive.

Further reading

James Stokes, *Earning a Living in the Visual Arts and Crafts*, Hale and Iremonger, 1997.

Seth Richardson, *The Art of Insurance: Creative Approaches for Artists*, Arts Law Centre, March 2004.

Michelle Borg, Alison Davis, *Liability for Damage to Consigned Artworks*, September 2002.

David Throsby and Katya Petetskaya, *Artists as Workers: An Economic Study of Professional Artists in Australia*, Australia Council for the Arts, 6 May 2024, available at: [Artists as Workers: An Economic Study of Professional Artists in Australia - Creative Australia](#).

Code of Practice for Visual Arts, Craft and Design, NAVA 2022. Can be downloaded from <https://code.visualarts.net.au/>.

Consignment Agreement, sample agreement and explanatory notes, Arts Law Centre of Australia

Contacts

NAVA (National Association for the Visual Arts)

Tel: (02) 9368 1900

Fax: (02) 9358 6909

Guildhouse

Tel: (08) 8410 1822

guildhouse@guildhouse.org.au

8. MUSIC

Anyone will tell you that music is a difficult business to succeed in and while it might be every school band's dream to make it big, there are few for whom that dream ends up being a reality. Why? It's a high-risk business, it costs a lot of money for equipment and promotion and, for all but the lucky few, the money isn't good.

A report by the Music Industry Council of SA in March 2015 stated that "commentators have variously blamed 'not enough venues', or conversely 'not enough talent', the advent of easily accessible online music, undue noise/amenity complaints from nearby residents, changing music tastes and the existence of pokie machines as the key reasons for a reduction in both live music gigs and the profitability of live music...While there may be merit in some of these reasons in some cases, they are often contradicted by others and upon closer examination of the root causes of what restricts live music at the 'coal face' a number of common agreed themes emerge:

1. Hotels/pubs/clubs/nightclubs continue to host the overwhelming majority of live music gigs...more than 76% of all APRA/AMCOS receipts for live music venue expenditure and receipts are from licensed premises...Licensed premises are key stakeholders and are key to solutions.
2. Onerous liquor licence/entertainment consent requirements actively discourage or prevent venues from engaging live musicians or expanding their current offerings.
3. Complicated and potential costly building/zoning requirements may also discourage venues from starting to provide live music.
4. The high additional compliance costs for venues to support live music, including Workcover.
5. There is a lack of information for both venues and musicians as to how to engage musicians and/or get a gig."

Obtaining adequate insurance is also an issue. A 2002 report noted that: "live music remains the most significant form of income for artists." It follows that protection of equipment and liability towards members of the public are two major areas of insurance that live musicians need to consider. Musicians working from home studios have similar concerns to other home-based arts workers.

On the other hand, for promoters many specific risks exist. There's the possibility of bands pulling out, cancellations due to rain, liability to the public, and responsibilities in the office or at venues. Whilst the remuneration for bands isn't always good, the business itself is a multimillion dollar one and, if something does go wrong, the losses can be significant for promoters and musicians alike. The tragic case of a fatal accident at the Big Day Out concert in Sydney in 2002 is a prime example.

The very real risks for musicians, promoters and others in the music industry became evidently clear during the COVID-19 pandemic which had implications for most if not all musicians across the world. In Australia alone, the number of promoted live music events fell from 35,800 in 2019 to just 7,300 in 2020 which was almost an 80 percent decrease. This decrease can be linked to the safety measures put in place such as social distancing and venue capacity limits. Advocacy group *I Lost My Gig Australia* estimated that 32,000 gigs were cancelled due to COVID-19 and that 99 percent of the lost revenue from this had no income protection or event cancellation insurance.

Quite simply, the music industry isn't lucrative for all concerned but the risks that exist from theft, accidents and cancellations do mean it is worth your while looking at insurance (even though you might think twice about buying insurance cover when you can't afford a new octave pedal or a set of strings!)

8.1 Attitudes to insurance

Managers and promoters agree that many bands choose not to insure and instead carry the risk. Sometimes this attitude reflects a lack of finance, sometimes just wishful thinking. One manager had been operating an office for two years without any insurance on the contents and equipment, when the whole office was gutted by fire. He had hoped to ring around for insurance quotes that week – but it was too late.

On the other hand, the choice not to take out insurance could also be a reasonable response to risk and cost assessment. Promoters will often cover the risk of a cancelled act themselves because it isn't worthwhile taking out the insurance. For example, a "cancellation through rain" clause will not cover the situation if the rain falls outside the hours specified in the insurance policy.

Musicians, like other artists, have traditionally been a group which insurance companies have failed to underwrite adequately. Often musicians have been seen as too great a risk – whereas in fact it might be thought that insurance companies have failed to properly assess the risk involved. The risks of single performers are likely to be harder to assess and less lucrative for insurance companies than big ticket risks facing promoters and venues (e.g. cancellation, non-appearance, public liability).

As with all Art forms, take the time to talk to people in your industry and seek recommendations for policies, brokers and companies who are responsive to the needs of performers.

A checklist that Aon recommends when shopping for musical insurance is as follows:

- 1. Consult a well-established broker specialising in the music industry.**
- 2. Ask for a copy of the policy terms and conditions.**
- 3. Establish the events that are covered.**
- 4. Establish the events that are not covered.**
- 5. Ask if there are any special security requirements.**
- 6. Find out the excess amount payable on claims.**
- 7. Ask if the policy has a no claims discount scheme.**
- 8. Check for any restrictions, e.g. whilst the equipment is in a motor vehicle.**
- 9. Ask about the premium cost.**

8.2 Planning suitable cover

Musicians, especially ongoing groups, need to assess their risks and determine how they can get adequate insurance cover. This could involve the question of financial management in general – for example: "will we form a company or write up our partnership agreement so we can organise our financial and legal affairs better?" Or will we take a risk and put it down to experience?" It could be an expensive experience!

The sole trader status of many musicians has meant in the past that adequate insurance cover

was difficult to obtain. In recent years however, more specialist providers have hit the market underwritten by well-known insurers (e.g. Musicians & Singers Insurance Specialists).

However, there are also positive steps that can be made to minimise risks and reduce premiums within the music industry. These include:

- Undertaking a risk assessment of your own activities and modifying these to reduce risks and possibly reduce your premiums;
- Undertaking an assessment of the reasonableness of self-insuring;
- Consider achieving reduced premiums by accepting higher excesses;
- Consider lobbying as a group with other artists to get cheaper premiums and the advantage of policy packages.

Seek professional advice if you are unsure about the course to follow – for example, through Arts Law or a qualified, specialist insurance broker.

8.3 Specific areas of cover for musicians and promoters

We have considered below some of the basic risks likely for musicians and promoters.

Instruments and equipment

Instruments and equipment need to be transported to and from gigs. As a musician, unless a large promoter is picking up the tab for your insurance it is essential that you insure the tools of your trade, (your instruments, mixers, speakers and microphones) for insurance in transit, accidental damage and/or theft. Household insurance may provide some cover when your equipment is at home but is not likely to cover you on the road. If your gear is specialised and particularly expensive, make sure it is noted on your policy so it is covered.

There are several kinds of equipment and instrument policies on the market. Some are more comprehensive than others. In the past many companies have modified existing non-entertainment contracts, but there are now brokers and insurance companies who specialise in this area. For instance, Aon Risk Services have a specialist *Entertainment Insurance* division and other names and addresses are available in the *Australian Music Industry Directory* or the *Melbourne Music Net Directory*. The kind of cover you obtain will depend on your activities and needs. Some companies' 'top cover' will insure theft from venues, vehicles, accidental damage and fire cover, emergency hire costs and transit damage. 'Standard cover' does not usually include theft from a performance, recording or rehearsal venue, or emergency hire costs. 'Basic cover' has the same exclusions as standard cover and also excludes accidental damage.

Insurance of equipment is particularly important when it is bought on hire purchase. Some companies insist on insurance cover for equipment on hire purchase. Although not being insured may represent a saving at the time for a musician, the saving will become illusory if a theft takes place and you are confronted with replacing expensive equipment. It boils down to a decision: do you want to be able to continue working in your chosen industry if your equipment gets damaged or stolen? Or are you prepared to take that risk? In Shane Simpson's book, *'Music Business'*, he notes that there are fine Australian musicians who have had to leave the industry and get a steady job to repay a finance company for lost equipment.

Public Liability

The joy of your performing career is a sold-out venue and a crowd full of fans loving your music. The same scenario turns quickly into a nightmare, however, if in their enthusiasm someone is injured by a bit of dangerous stage diving in a maverick mosh-pit. Although a venue will usually

have its own public liability cover, as will the security company on the ground that night, you will also need to be covered. The more significant the injury the more likely a claim will ensue and the more likely you will be included in that claim.

Consider the following scenarios:

- *Ant and the Bad Messages* are playing at a festival when a couple of the audience members climb on stage and decide to do a bit of “stage diving” – taking a flying leap outwards in the hope of being caught by someone below. This has become a popular activity at Bad Messages concerts which the band celebrates. Do they have a particular liability for any injuries that ensue because they have not tried to stop their fans?
- In the case of 2001’s *Big Day Out* concert, a young woman died of a heart attack as a result of crowd surge at the front of the *Limp Bizkit* performance. The result was a coronial inquiry and a revision of security provisions at the concert, but many issues were raised about the band’s ability to stop such crowd actions. The organisers’ insurance premiums rose 600% as a result.
- A small promotions company, *Outlook*, hires the Friendly Society Hall in Wondaroo for a concert. A large crowd arrives and overflows the small hall. In the crush, a member of the audience is injured. The Friendly Society has public liability insurance for its own activities in the hall but this doesn’t cover the concert promoter.

In the scenarios above, both *Bad Messages* and *Outlook* are likely to require the benefit of their own public liability insurance. The *Big Day Out* organisers had insurance cover, which covered the band, but it is an important example of just how risky some creative expression can be!

Find out whether you are covered by a venue’s insurance, and in what circumstances, by asking the venue owner at the time you negotiate your contract and by double checking with their insurance company just to make sure. You should not take the venue owner’s word for it though. It is essential that you read the policy yourself. If you do not understand the policy, or are unsure whether it covers you, you should seek legal advice. If you are not covered or are only covered to the extent of the venue owner’s negligence, there is a gap in your insurance that you need to address by obtaining own public liability insurance. Do not forget that if judgment is obtained against you and you do not have any public liability insurance you risk losing your personal assets.

It is important to remember that public liability cover does not insure against accident or injury to a band member.

Workers’ compensation or life insurance

Life insurance, such as income protection, can provide cover if your work is interrupted by sickness or injury – usually for a limited period. It can be taken out individually, which is useful if you are self-employed.

If you are an employee you should be covered by workers’ compensation insurance. Furthermore, in New South Wales, an entertainer engaged to perform in a registered club is deemed to be an employee for worker’s compensation purposes (see Chapter 4).

Superannuation

Media Super advertises that it is an industry superannuation fund for people working in the creative media industry such as print, media, entertainment, arts, actors, performers and musicians. It is not clear whether there are advantages to joining this superannuation fund over any other scheme so undertake your own investigations.

Travel insurance

While equipment insurance at the top level will cover equipment and instruments during tours, the value of other baggage may not be covered so consider taking out travel insurance on tour. If you are touring overseas, this may also provide you with cover for health care expenses. Of course, you will retain your access to Medicare health care while inside Australia.

Motor vehicle insurance

Whether you are on the road touring or just lugging equipment in the back of your car from gig to gig, it is important to be covered in cases of accidents. If you are using your vehicle for a business purpose (it is important to clarify with your insurer what they consider to be business use) you will need to take out comprehensive motor vehicle cover. You may be able to extend your motor vehicle policy to cover the contents of your vehicle as well such as your instruments.

Non-appearance or cancellation

This insurance covers the risk that a performance is cancelled due to illness, non-arrival of equipment, strikes, or venue problems.

In some cases, promoters may feel they can financially cover the risk of cancellation themselves, especially if the act is local and can be rescheduled. Due to high premiums, this is often the decision that a promoter will make.

If there may be large financial losses due to cancellation (e.g. costs of accommodation, airfares and travel, advertising, venue hire etc.) that cannot be recouped, the risk should be covered by insurance. It is important to note that non-appearance and cancellation insurance will not cover 'Acts of God' (i.e. the Newcastle earthquake) unless they are specifically negotiated and included in the policy.

As a performer your intentional non-attendance at a concert may constitute a breach of contract which would not be covered by your cancellation insurance.

8.4 Employment for a specific project

If you are employed for a specific short-term project, Arts Law recommends that you have a written agreement that covers insurance. A sample clause is:

"Insurance

- (a) The Employer agrees to take out and maintain a Workers' Compensation Insurance Policy in favour of the Artist.*
- (b) The Employer agrees to take out and maintain adequate public liability insurance cover.*
- (c) The Employer agrees to provide copies of all policies, schedules and coverage summaries to the Artist, upon request.*
- (d) The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment."*⁵²

Further reading

Shane Simpson and Jules Munro, *Music Business*, Omnibus Press 2012.

Parliament of Australia, *Report on the inquiry into the Australian music industry*, Commonwealth of Australia, 2019, available here: [Report – Parliament of Australia](#).

Contacts

Music NSW: NSW based music industry support organisation. Information, advice, referral, education and training, available here: <http://www.musicnsw.com>.

Media Super: A specialist industry super fund for media, print, musician and other artists, available here <https://www.mediasuper.com.au/>.

<http://musicaustralia.org.au/directory/>

<http://themusic.com.au/meta/the-mags/australasian-music-industry-directory>

<http://www.musicvictoria.com.au/directory>

<http://www.ausband.com.au/>

9. PERFORMING ARTS

It is well known that actors will go through hell and high water to make sure that the show can go on. There are stories of performers going on stage with broken legs or in wheelchairs. So, when it comes to insurance for performers, they might tell you it's not necessary but... read on.

When talking about insurance for "Performing Arts", we are covering a broad range of activities. This can be anything from a large commercial theatre company to a small, independent or community-run production. It can also include schools and workshop groups, dance companies, variety promoters and events, voice actors, and more!

With such a diverse group, you can imagine that the insurance cover required would differ widely depending on the activities undertaken. The following are some examples of performing artists, organisations and the types of insurance cover they may require:

- **Flying Fruit Fly Circus** – is a group who train young people in circus skills and perform both nationally and internationally. They employ trainers and artists, have volunteers and maintain a workshop space with a huge tent. Every year they are responsible for up to 120 kids on a full-time basis and up to 3,000 kids in short-term workshops. The insurance they require includes **business, general property cover** for office and gym equipment, **public liability** and **volunteer insurance** for volunteers and visitors, **motor vehicle, transit and marine insurance** for their tent and equipment when on tour and **workers' compensation** for their employees. They may also require **business interruption insurance** should their tent and equipment go up in flames.
- **Ausdance** – is a group that represents the interests of dance studios, teachers, choreographers, dance companies and independent artists. Ausdance have aligned with Aon insurance company (which is also the favoured insurer of Volunteering Australia, and sponsors the 'Our Community' website) to provide well priced and tailored insurance for their members. This package can include **public and products liability** and **professional indemnity** as well as **studio contents, superannuation, workers compensation and personal accident and illness insurance**. The scheme has been developed with Aon Risk Services, and QBE, CGU, Royal and Sunalliance, Allianz and ACE, all of whom are APRA (Australian Prudential Regulation Authority) approved insurers.
- **P-Jamas** – is a freelance clown, juggler and hula hoop expert. She is insured through **Duck-for-Cover** and has a community umbrella insurance (insurance that exceeds normal cover) for **public liability**. Although she could insure her equipment with **property insurance**, she chooses not to and must make sure that it is never left in the car or out of her sight!
- **Australian Theatre for Young People** – is an organisation that offers workshops and theatre productions to assist young people at all levels of the performing arts industry. It also provides opportunities for young performers to connect with national and international theatre companies. It requires **public liability, volunteer insurance** and **contents insurance**.
- A freelance voice artist procured **personal accident cover** from Lloyds of London (a large insurance market) to protect herself if she loses her voice and therefore her livelihood.

Quite clearly there will be different insurance requirements depending on whether you are a solo artist, company administrator, teacher, promoter, or venue operator. The following are some of the covers that are available in the performing arts area, with an indication of where they might be useful.

9.1 Insurance needs for performers

Instruments and equipment

If you're performing in a public space, or there's a chance your belongings could go missing, you may want to consider taking out insurance for your gear. This is especially relevant if you're touring. Aon Risk Services provide specialist cover in the entertainment area. Aon can provide equipment cover for performers, artists, events, studios, event organisers and promoters.

Vehicles

If you have a vehicle that's used for work purposes, then you should take out comprehensive motor vehicle cover. You may be able to extend the cover to its contents as well. Otherwise, make sure you have equipment cover that includes your gear in the vehicle.

Public liability

If you're giving a performance or workshop where there could be some risk to the public, public liability insurance is essential. If you are performing at a venue, find out whether you are covered by the venue's insurance, and in what circumstances. This is best done by asking the venue owner or by double checking with their insurance company or broker. Try to get any response in writing!

Public liability is one of the most important insurance covers for all businesses. If you are not covered by a venue owner or event organiser, think seriously about taking out your own policy.

Public liability insurance is designed to protect you and your business from the significant costs associated with any legal action. This might be because of any actions (or inactions) that have caused damage to someone, or something, that interacts or associates with your business (including employees).

You owe a duty of care to your customers, employees, and the public. If someone is injured from your actions, even if you didn't mean to injure them, a court can order you to pay the injured party money as compensation. This has financial and commercial consequences which can be damaging to your business, not to mention the personal toll this may take on yourself.

Public and products liability insurance can cover you for:

- money you are required to pay arising from claims;
- compensation to anyone who was injured or had their property damaged because of an incident connected with your business; and
- money required for lawyers to defend you against any court claims.

For freelance performers, ***Duck-for-Cover*** is a not-for-profit incorporated association whose function is to assist its members to find ***public liability insurance***. The insurance scheme is only for individuals in performance-based arts. For more information go to:

www.duckforcover.com.au.

If you don't have your own cover, you could try to get some sort of guarantee from workshop participants in writing that they are accepting any risks of injury associated with participating in your workshop. You could also do this by warning participants before the start of the workshop that you're not covered and that they are participating at their own risk. This warning or agreement will not always protect you from legal claims, and the safest option is to have insurance.

Life insurance

Despite the “never say die” mentality of many performers, you might be laid low. As this is your livelihood you should consider covering yourself. **Income protection** is a type of **Life Insurance**. It can provide cover if your work is interrupted by sickness or injury – usually for a limited period. It can be taken out individually, which is useful if you are self-employed.

Performers who can prove that they have had consistent income over a period of twelve months should be able to secure cover. If your income is not regular and you become sick or have an accident, it's possible that there could be no claimable loss of income. Premiums (the amount you pay for insurance) are often expensive for this sort of insurance. This type of cover is often also available through your superannuation fund.

Travel insurance

If you are travelling for work, this form of cover is essential. Medicare will cover some health costs in Australia, but it may not apply overseas. Travel insurance also serves to insure your luggage and equipment while touring. If you are touring with the support of a production company, you may be covered by their insurance so check your contract or ask them.

Superannuation

Workers in the entertainment industry are eligible to become members of JUST SUPER. If you are not eligible to become a member you can maintain your own superannuation fund. If you are an employee, then refer to Chapter 4 regarding employee superannuation contributions under the Superannuation Guarantee scheme.

9.2 Theatre and dance companies, promoters and venues

For larger performing arts concerns, and for those in the business of promoting performers, there are some forms of insurance that are worth considering (if not essential). The companies surveyed for this publication had an average of **five insurance products**.

Building and contents insurance

This sort of policy should cover your office contents and equipment against theft, fire, accidental damage, malevolent act (when someone deliberately causes damage), water damage, earthquake, storm, lighting, explosion and potentially civil commotion (riots or mobs).

Directors' and officers' insurance

Directors of companies (such as a theatre or dance company) have special responsibilities which arise from their duty to exercise reasonable care and diligence with respect to the company's obligations. This means that any Directors have a responsibility to think about and do what is best for the company. As a result of this duty, directors can be personally liable (meaning that they can be sued) for debts or penalties incurred by the company or as a result of their personal action or inaction in their role as Director. This is a different role to a Director of a play or musical!

Directors' and Officers' insurance will offer some protection for key personnel (people who run the company) against claims for a breach of their legal responsibilities. This insurance may cover the legal cost of successfully defending a lawsuit brought against key personnel within the

company (but not always). The actual cover will depend on the specific policy. It will not cover a breach of the Directors' fiduciary duty under the *Corporations Act* (a responsibility to appropriately manage finances). For example, if a director embezzles money or mismanages funds the company would need to rely on separate **fidelity guarantee insurance**. It will often cover claims against you for defamation (if you say something negative about someone publicly) or at least the legal costs of defending a claim for defamation.

Fidelity guarantee insurance

This covers losses caused by fraud or dishonesty by employees. Small-scale theft can be seen as a loss for which the company might cover itself, but in an organisation where there is a possibility of substantial loss, cover can be arranged for key personnel (e.g. financial managers, paymasters, prop managers). Blanket cover (cover for everyone) can also apply.

Public liability

As discussed above if your company is running workshops where there could be some risk to the public, or if you are promoting events with large audiences, you must have this cover.

Personal accident/volunteer workers

Volunteer or trainee workers will not be covered by your public liability policy in the event of an accident on your premises unless you have a specific cover in your policy. Volunteer or personal accident cover is available widely at differing premiums. Cheaper volunteer insurance schemes are available to non-profit organisations through local community services associations in each State (see Chapter 5).

Workers' compensation

All employers are required by law to make workers' compensation contributions on behalf of their employees. This includes an insurance component. If you're not a registered company, or you're self-employed, it may be worth thinking about setting up a servicing company to secure this insurance (see Chapter 4).

Non-appearance, cancellation and abandonment

This insurance covers promoters and organisers against losses incurred as the result of a non-appearance or cancellation by a performer. It also provides cover in the event a performance is cancelled due to causes beyond their control e.g. weather, illness, fire etc. Insurance policies will not cover cancellation due to lack of ticket sales. The types of losses covered could include labour, venue rental, accommodation and meals for performers as well as travel costs.

Money in transit

For a promoter or company that holds a lot of cash from ticket sales, merchandise or for payment of wages, this policy covers the theft or loss of that cash to and from the bank or while on tour. You should check the terms of any policy carefully to check exactly what is covered and in what circumstances.

Machinery or electronic equipment breakdown

This covers loss through the breakdown of major machinery or electronic equipment. This may include air conditioners, speakers, lights etc.

Property insurance

Any equipment that is your responsibility (e.g. sets, props, costumes, and musical equipment) will require specific insurance (if it is not covered by your contents policy). It's important to specify if cover is to be extended to articles on loan to the organisation or to members' personal equipment. This may require an extension (alteration to your insurance policy) for equipment that goes on tour. Separate transit cover is also available. Another form of cover for your belongings can be obtained by having an endorsement added to your public liability policy.

Motor vehicle insurance

If you own a vehicle (or if you don't but your members or volunteers use their vehicles on your behalf) you could be responsible for damages that occur during work-related use of the vehicle. Organisations should consider **third-party property** and **personal injury** cover as well as compulsory third party personal insurance. Insurance companies must be told about any unusual risks which would need coverage e.g. if different drivers or volunteers use your vehicle or equipment is stored in your vehicle overnight. These matters may alter your premiums, but may also help you avoid failed claims.

(see sections 1.3 and 1.4).

9.3 Specialist cover for dance teachers and choreographers

With the heightened physical risk involved, dance teachers and choreographers have a clear need for insurance cover.

Ausdance has developed insurance cover for dance studios and freelance dance teachers through Aon Risk. This package can include public and products liability and professional indemnity (broadform coverage). It can also include studio contents, superannuation, workers' compensation and personal accident and illness insurance.

This is a good example of a representative body lobbying to create effective cover for its membership. Cover includes Feldenkreis teaching as well as dance and gives dance teachers some protection for their future livelihood.

9.4 One-Off Events

For the promoter of a one-off event, or an arts organisation organising a benefit or fundraiser, there are special insurance considerations. If a venue is hired, you can't just assume that you will be covered by the venue's insurance. You may need to provide your own cover.

Key areas in event coverage are:

Public liability

As discussed above, this is absolutely necessary for any event that may involve risks to the public. The price and the type of public liability insurance will depend on the risks. For instance, if you have a flying fox or stilt walking activities at your festival, you will have a greater level of risk

compared to stand-up comedy or flower arranging competition. It's important to go to specialist brokers in this area, so shop around! See Chapter 2 for further details.

Ensembles/Volunteers

Volunteers working on an event, or members of an ensemble who are not key performers will not automatically be covered by public liability insurance in the event that they are injured performing work on your behalf. It is worth acquiring additional cover to mitigate any risks, or have an endorsement added to your public liability package.

Other types of insurance

You may want to consider cancellation, denial of access to venue, severe adverse weather, power failure, non-appearance and/or cash in transit insurance. The premiums for these sorts of cover tend to be expensive but are worth thinking about if the losses you could incur can't be covered any other way.

Aon Risk Services can provide for event insurance including public liability, volunteer personal accident and weather cover for all community and corporate events.

9.5 Employment for a specific project

If you are employed for a specific short-term project Arts Law recommends that you have a written agreement that covers insurance. A sample clause is:

"Insurance

- (a) The Employer agrees to take out and maintain a Workers' Compensation Insurance Policy in favour of the Artist.*
- (b) The Employer agrees to take out and maintain adequate public liability insurance cover.*
- (c) The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment."*

Contacts

Aon Risk Services: http://www.aon.com.au/small_medium_business/industry_groups.asp

Ausdance: www.ausdance.org.au

Action Insurance: <https://www.actioninsurance.com.au>

Duck-for-Cover: public liability for performing artists, available here www.duckforcover.com.au

10. FILM & SCREEN

Producing a film or screen project - whether it's a feature or independent film, documentary, television series or music video - requires different activities that come with various risks. It's often a costly business, so producers can lose a lot of money if insurance cover isn't adequate. There is specific insurance for film - covering categories like equipment and film stock, actors, production employees, travel, vehicles and cancellation.

Producers should consider specific risks according to the activities and the budget of the film. Film funding bodies often require that producers have certain insurance to obtain grants, which can vary. For example, Screen Australia (formerly the Australian Film Commission) requires workers compensation and public liability insurance policies be taken out. You should check your investment/production contract for these details.

10.1 Insurance for film productions

The following insurance covers exist for film.

Film production insurance

This is known as "cast insurance", which provides cover for increased costs if there's a death, injury or illness of the people you nominate for cover in your insurance policy.

It's typical to insure important personnel that are necessary for production - i.e. director, key crew, and the leading cast. The indemnity can cover two periods of a shoot: (1) pre-production, and (2) the shoot itself. Medical examinations are often required to insure these key personnel. The amounts that you have to pay before your insurance kicks in (called 'deductibles') are often high for this kind of insurance.

Items that may be excluded from this insurance may include flights where the insured person is piloting the aircraft or hazardous stunts if the insurer is not notified in advance.

Content media risk

This covers loss or damage to negative/tape/media and faulty stock, camera and processing. It is important to extend this insurance to cover the entire shoot, editing process and final print, plus an extension of approximately one month.

Multi-risk

This provides cover for accidental loss or damage to cameras, lighting and electrical equipment, props, sets and wardrobe. This can be extended to include office contents for production. Special or loaned items, jewellery or equipment often need to be specifically identified for cover.

There are often major exclusions, so it is important to check that you have the right cover. Common items excluded from cover in multi-risk policies include:

- wear, tear and gradual deterioration
- shortage of inventory
- rain, hail or sleet damage to property stored in the open
- damage caused intentionally or at the direction of the insured

- mechanical breakdown of equipment

Cover should include pre-production and post-production times and the full value of the items should be listed (otherwise averaging could be applied). The ownership and usage of the items needs to be specified to the insurer (e.g. are the items on loan, will the cars be used in stunts, will equipment travel across water etc.)

Workers' compensation

It is compulsory for employers to cover all employees. Refer to Chapter 4 for further detail.

Public liability

Public liability is one of the most important insurance covers for all businesses. It is designed to protect you and your business from the significant costs associated with any legal action from your negligence – whether negligence has actually occurred or someone has alleged that you were negligent. This risk occurs when something happens in the course of your business that has caused property damage or personal injury to other people (including employees).

You owe a duty of care to your customers, employees, and the general public. If you are found to be negligent, even if you didn't intend to be negligent, you can be ordered to pay substantial compensation to claimants which could damage your financial position.

Public liability insurance can cover you for:

- amounts you are required to pay because of claims
- compensation for third party personal injury and/or property damage, which occurs as a result of something that has happened in connection with your business
- legal proceedings, including the legal costs of defending the claim

In film, public liability insurance can also extend to the loss of use of cameras for the shoot through damage or weekly rental costs (this would require a special mention in a public liability policy). Screen Australia, NSW Film & Television Office (FTO) and some councils require public liability cover of certain amounts (generally between \$10,000,000 to \$20,000,000). The cost for this varies according to the risks involved in the filming process. See also Chapter 3 on reducing your insurance costs.

Extra expense insurance

This is usually limited to feature films or larger documentaries. If you have increased costs as a result of loss or damage to props, sets and facilities (including studio space), this form of insurance will provide more cover than a multi-risk policy. The extra expense policy would be valuable for example if a studio is destroyed by fire or damaged beyond use.

Travel insurance

If you're filming overseas, the crew and cast should have travel insurance to cover any health issues or accidents.

Personal accident and injury

It is advisable to have personal accident and injury insurance to cover any individuals who are not covered by workers' compensation or who will be in dangerous situations e.g. stunt people, people filming from the air, at sea etc. This covers against greater loss if anyone insured ends up with a disability.

Cash in transit

You can take out insurance to cover money or other negotiable instruments in the care, custody or control of authorised personnel. Cash in transit insurance covers money going to or from specified locations. It excludes theft by employees.

Motor vehicle insurance

Action-vehicles used in filming would be covered by multi-risk, but any vehicles being used by employees or volunteers would need to have comprehensive insurance. Check with the owners of vehicles to see whether you as the producer could be seen as responsible for the vehicle and need to take out motor vehicle insurance.

Special insurance

It is a requirement of Screen Australia and some other funding bodies that "special persons" (including stunt people and anyone appearing in the production who has special status) require special insurance in the event of accident or injury. For example, a celebrity like Kylie Minogue might be classed as having "special status". You should also find out if these special persons already have insurance cover.

Errors and omissions

This form of insurance offers a film producer professional indemnity for a claim for defamation, infringement of copyright, plagiarism, invasion of privacy or theft of rights.

A claim must occur during the policy period to be covered. So, three years of cover is recommended to capture potential claims. Screen Australia requires a specific level of cover (with an increase if marketing is to take place in the USA) but it does not require you to insure for errors and omissions.

Completion guarantee

This is a form of guarantee to investors and other interested parties that a film or television production will be completed. Usually, the financial investors will require a completion bond. These are provided by a completion bonding company that will spread the risk by reinsuring with another insurance company.

Completion bond companies require detailed information about production to assess viability and may set strict conditions in return for granting a completion bond. Screen Australia does not require you to budget for a completion guarantee.

10.2 Insurance for independent producers, filmmakers

For smaller producers and independent filmmakers, many of the above insurance covers can seem prohibitively expensive. Outside the larger studio feature production areas, filmmakers might require a different approach to insurance.

The freelance status of many filmmakers and the low funding levels of smaller productions mean that you may not always be able to get adequate insurance cover. In recent years insurance has increased significantly in cost and as a percentage of funding/income. This has impacted many artists and small companies.

There are steps you can take to minimise risks and reduce premiums. You should consider:

- How can you modify your activities?
- Are there possibilities for self-insurance and covering risks?
- What are the financial considerations of long-term coverage versus short term savings - can you balance reduced premiums and higher excesses?
- How can you lobby with others, as a group, to get cheaper premiums and the advantage of policy packages?

If these issues are a concern to you, read Chapter 3 regarding reducing your insurance premiums.

Office, studio and equipment

Let's take a filmmaker that edits material in a smaller studio, which is stored in their own workspace. Equipment and studio or office cover should be a priority.

While the costs are high for individual filmmakers, it is worth considering as the possibility of damage or loss of equipment/film from fire and theft could endanger further production. Make sure to inform the insurance company of your specific activities, including the use of equipment outside the studio.

Public liability and volunteer insurance

Film and video producers working with community groups, volunteers and workshop participants (especially in public access TV and video) could be held liable in the event of an accident. Public liability insurance is required to cover against injuries to workshop participants, and personal accident and injury insurance would normally be required for volunteers.

If you are working in a venue or studio that might already be insured (e.g. a public TV station operating in a university building), it's worth investigating whether you can extend the organisation's insurance to cover your operations. Remember to get information in writing!

Remember that public liability cover does not insure against accident or injury to employees, or the person holding the insurance.

10.3 Employment for a specific project

If you are employed for a specific short-term project Arts Law recommends that you have a written agreement that covers insurance. A sample clause is:

"Insurance

(a) The Employer agrees to take out and maintain a Workers' Compensation Insurance Policy in favour of the Artist.

(b) The Employer agrees to take out and maintain adequate public liability insurance cover.

(c) The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment."

Further reading:

Damien Parer and Tom Jeffrey (eds) *Film Business: A Handbook for Producers*, Allen & Unwin, 1996.

Gill McKinlay, *The Film and television industry and the new tax system*, Australian Film Commission, 2000.

Contacts:

Screen Australia – www.screenaustralia.gov.au

Telephone: +612 8113 5800 (Sydney), +613 8682 1900 (Melbourne), 1800 213 299 (Free Call – Sydney), 1800 213 681 (Free Call – Melbourne).

Women in Film and Television – www.wift.org

AusFILM – www.ausfilm.com.au

Telephone: (02) 9383 4192

Australian Directors' Guild – www.adg.org.au

Telephone: 02 9555 7045

Screen Producers Association of Australia – www.spaa.org.au

Telephone: +612 9360 8988

Australian Film Television and Radio School – www.aftrs.edu.au

Telephone: 1300 131 461; +612 9805 6611

State and territory bodies

Film Victoria – www.film.vic.gov.au

Screen New South Wales – www.screen.nsw.gov.au

Telephone: +612 8289 6533

South Australian Film Corporation – www.safilm.com.au

Telephone: +618 8394 2000

Screen Territory, Northern Territory Government – www.screenterritory.nt.gov.au

Telephone: +618 8999 6302

Screen Queensland – www.screenqueensland.com.au

Telephone: +617 3284 0500

Screen Tasmania – www.screen.tas.gov.au

Telephone: +613 6165 5070

(Western Australia) Screen West – www.screenwest.com.au

+618 6169 2100

Media Resource Centre, SA – www.mrc.org.au

Telephone: 08 8410 0979

11. WRITING

There are two main ways you might work as a professional writer. First, you may be paid by somebody else to write something, for example, a book, a play, or a script for a film. This is often called a 'commission'. The other way is to work on your own material, which you might then ask somebody else to publish or make into a movie or play. The type of questions you should be asking about insurance depends on how, and where you work:

- If you work at home, do you need insurance for equipment such as a laptop? What happens if you need to transport it and it gets lost or damaged?
- If you have a publisher or employer, do they provide insurance cover if you get sued about something you have written, or do you need to arrange your own insurance?
- If you are commissioned by somebody else to write something, do they have any insurance that provides protection if you are injured while doing that work? If not, do you need to arrange your own protection?

Some of the types of insurance available to writers are described below.

11.1 Equipment insurance

As a writer, some or all of your writing will probably be done on your own equipment, such as a laptop or tablet. Depending on where you work and how much your equipment is worth, those items might not be covered under your ordinary house and contents insurance. This means that you may need to get separate insurance (or specifically tell your insurer about any writing equipment) to provide you with protection if that equipment is lost or stolen.

If your equipment is worth a lot of money, and/or you do not work from home, commercial or business insurance might give you the best protection. This type of insurance policy protects your office contents against fire, theft, water damage and more. For more information on working from home see Chapter 12 (Multimedia).

Risk Management – guard your work-in-progress

Insurance companies recommend that you back-up your work and files onto external hard drives or to save your work in the 'cloud'. This means that you won't lose your work if your computer is stolen. Don't forget to photocopy your drafts or email them to yourself as a simple way of protecting your work.

Transit insurance

If you use a laptop or a tablet and take it with you outside of the home or the office, it might be worth considering transit insurance. Transit insurance can protect you if your equipment is lost or stolen whilst you are taking it somewhere. It can be expensive, but it usually provides better protection than other types of insurance, such as ordinary property or business insurance. Before considering whether you need transit insurance, first check if you already have a policy that can be extended to cover your equipment when it is being transported.

Many writers use laptops and tablets so they can work wherever they like. If you take your writing equipment to and from home or an office, there is insurance that can protect you if it gets stolen

while it is on the move. Transit insurance can be costly, but it could provide better cover than a general property or business insurance policy. Find out first if you can extend your equipment and office contents cover to protect you when transporting your writing equipment.

11.2 Professional indemnity – assessing your risks, publishing agreements

Professional indemnity insurance is a type of insurance that covers claims made by others against professionals (for example, lawyers, engineers, accountants) about the advice they have given, or services they have provided. A simple example is a lawyer who gives the wrong advice and is sued by their client. A professional indemnity policy will generally cover all amounts that the professional will have to pay because of that claim, including legal fees and any money paid to the person who is suing.

If you are an employee, your employer might provide professional indemnity insurance but this will not usually include freelance writers.

Whether you need professional indemnity insurance depends on the type of work you do, and how likely it is you might get used by somebody because of that work. For example, if you write about politics or celebrities, you will have a higher chance of being sued for defamation than if you are a children's book writer.

Defamation is where a person makes a claim that their reputation has been damaged because of something that has been written about them. It is the most common risk faced by the writing profession and is usually brought against the publisher. Most publishing agreements between a publisher and a writer provide that it is the writer who will be legally responsible for any defamation claims. This means that a writer often requires their own insurance cover to protect themselves if they are sued for defamation or are accused of some sort of wrongdoing because of something they have written.

Below is an example of a term, or “warranty” of an agreement that an author may have with a publisher:

The author hereby warrants to the publishers ... that s/he has full power to make this agreement, that s/he is the sole author of the work ... and that it contains nothing libellous ... The author will indemnify and keep the publishers indemnified against all actions, suits, proceedings, claims, damages and costs, occasioned by any breach of this warranty.

This warranty means that the publisher will not protect the author if the author is sued because of something the author wrote. It also means that if the publisher is sued because of something the author wrote, the author must pay the publisher any money the publisher spends to protect itself from the lawsuit (for example, legal fees).

Arts Law's view is that an author should not agree to a warranty along the lines above, or at the very least, that the following words should be added to that agreement (as recommended by the Australian Society of Authors):

That the author's indemnity shall not exceed the total monies received by the author under this agreement.

These additional words mean that if the publisher is sued, the maximum the author will have to pay is dependent upon how much they earned from doing the work. This is often a lot less than what a person suing for defamation may be asking for, and the warranty protects the writer from being responsible for more than they can afford.

However, the best thing to do is to avoid signing this type of warranty (or waiver as it is sometimes called) at all, if you can.

Overall, these warranties (or waivers as they are sometimes called) are not ideal for both the writer and publisher. While a manuscript or draft can be read by a lawyer to assess the risk of defamation, a writer may not be able to afford such legal advice or be able to obtain professional indemnity insurance. Generally, publishing houses will defend legal actions themselves without involving individual writers, as a writer may not have enough money to cover the amount of the lawsuit or to compensate the publisher. On the other hand, a writer could lose all their assets if the publisher does choose to sue the writer directly. This is not an issue to be taken lightly!

Another thing you should be aware of is that some insurance policies exclude cover for defamation. It is crucial that if you are organising professional indemnity cover for yourself, that the policy provides protection against defamation.

Professional indemnity insurance may be difficult to get depending on the content of the author's written work. An author or writer can approach an insurance broker to arrange professional indemnity insurance. However, any insurance company that may be willing to provide cover to the author will have to assess the "risk" of a defamation claim or any other claim being made against the author. This might involve the insurance company requesting to review any draft or manuscript prepared by the author. The cost of such a review (which could have to be done by a lawyer) may need to be paid for by the author unless the insurance company or publisher agree to pay for it. If the risk of a claim is high, the insurance company may refuse to provide cover, or they may increase the cost of the insurance (i.e. the premium or any excess payable if there is a claim).

Negotiate professional indemnity

Before an author or a writer considers arranging their own professional indemnity insurance, they should find out whether they might already be covered by their employer's or commissioner's insurance. If a writer is employed or they have an agreement with a commissioner, cover for professional indemnity (including defamation) should first be negotiated with the publishers. A publisher or film production company will often have their own professional indemnity insurance, which will most likely provide cover for claims caused by their employees. Before agreeing to a contract for employment or a commission, a writer should review the agreement and consider whether they are covered by their potential employer's insurance. Normally, there will be a clause in the written agreement that stipulates whether the writer will be covered, or "indemnified", by their employer. Alternatively, this is something that could be negotiated between a writer and an employer.

11.3 Employment for a specific project

If you are employed for a specific short-term project Arts Law recommends that you have a written agreement that covers insurance. A sample clause is:

"Insurance

- (a) *The Employer agrees to take out and maintain a Workers' Compensation Insurance Policy in favour of the Artist.*
- (b) *The Employer agrees to take out and maintain adequate public liability insurance cover.*

- (c) *The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment, including claims for defamation."*

11.4 Income protection

The different work arrangements of writers make income protection an area of cover well worth looking into. If the writer is employed and the employer has workers' compensation insurance, the employer's workers' compensation cover will automatically cover the writer (see Chapter 4). This could be the case for a writer working for a theatre company, for example. But what happens when the writer is an "independent contractor", or when all that the producer or editor is buying from the writer is the copyright or the licence for performing rights?

If freelance or self-publishing writers can demonstrate to an insurance company that they have had a defined and regular income (i.e. consistent earnings over a number of years from their writing), then they may be able to acquire some form of life or income protection insurance (see Chapter 4). This sort of insurance is worth considering if you have a family, children, or you are paying off a mortgage and cannot afford to lose income.

In writing, as in other freelance art forms, it may be advisable to think about setting up a company that can act as your employer for insurance and business-related purposes. This may alleviate some of the problems of freelance artists being sole traders. However, financial and legal advice should be sought, before going down this costly route.

Further Reading:

Arts Law Centre of Australia, *Defamation Law Information Sheet*, 2006 - <https://www.artslaw.com.au/info-sheets/info-sheet/defamation-law/>

Ken Methold, *Writing as a Business*, ABC Books 2002.

Lynne Spender, *Between the Lines: A Legal Guide for Writers and Illustrators*, Kessing Press (2004).

Contacts:

Australian Society of Authors – www.asauthors.org

Telephone: +612 9211 1004

Australian Writers Guild – www.awg.com.au

Email: admin@awg.com.au

Telephone: +612 9223 8933

Playwriting Australia - www.pwa.org.au

Telephone: +612 8274 0900

Poets Union – <http://www.poetsunion.com/>

State and territory writers' centres:

NSW Writers' Centre – www.nswwc.org.au

Telephone: (02) 9555 9757

NT Writers' Centre – www.ntwriters.com.au

Telephone: (08) 8941 2651

QLD Writers' Centre – www.qldwriters.org.au
Telephone: (07) 3842 9922

SA Writers' Centre – www.sawriters.org.au
Telephone: (08) 8223 7662

TAS Writers' Centre – www.taswriters.org
Telephone: (03) 6224 0029

VIC Writers' Centre – www.writersvictoria.org.au
Telephone: (03) 9094 7855

WA State Literature Centre – www.thelitcentre.org.au
Telephone: (08) 9430 6869

12. MULTIMEDIA

Multimedia is “the digital combination of two or more media elements – text, graphics, audio and video-presented in an interactive format.”

The book *Film Business* says multimedia has three parts:

- new technology
- a new form of cultural expression; and
- a new method for distributing information and entertainment.

Industry areas where new media content appears include:

- Multimedia and games companies;
- Film, television and post production sectors;
- The digital design industry;
- Publishing, including newspapers, magazines, fiction, non-fiction and reference books (encyclopaedias);
- Heritage and cultural displays in museums, libraries and art galleries;
- Education (especially distance education); and
- Training (including competency training)

Many different issues arise with insurance in multimedia since it covers a range of small to large companies working in so many industries and workplaces. Multimedia is used a lot but hasn't been tested under many rules and regulations since it is so new.

Multimedia is the electronic equipment and software that is most likely in need of insurance protection. Multimedia companies (i.e. online services) may also require cover for risks. The National Insurance Brokers Association (NIBA) has listings of specialist brokers who may be able to help.

When assessing a risk, an insurer considers how a company has let that risk develop (i.e. risk management of security or problems with online services) and measures in place to respond to the risk. An example of an insurer willing to underwrite risks of this type is QBE, which offers Information and Communication Technology Insurance.

If you are an independent contractor working in a commercial situation or small company, there will be other insurance considerations (including workers compensation, public liability and income protection). In this chapter we will attempt to outline most of the issues which face you as an independent contractor, as well as alluding to some of the insurances you might need if you are setting up a larger production company.

There are several industry bodies, which are listed at the end of this chapter, that specialise in multimedia, including the Australian Information Industry Association (AIIA), Communications Alliance, Australian Network for Art and Technology (ANAT) and Digital Technology Collective. Some of these organisations have insurance advice or links on their websites. As with any specialist area, it is important to find a broker who knows the industry and also to check policies carefully to ensure your particular risks are covered.

Independent multi-media artists

12.1 Equipment insurance

If you are a freelance independent contractor, some or all of your work will probably be done on your own equipment. This could range from a tablet, personal computer, laptop, server, software scanner, video editing equipment, digital cameras, video cameras, audio recording equipment to basic office equipment like faxes, photocopiers and phones. Depending on the value of equipment, and whether it is used for business, it may be difficult to extend household and contents insurance to cover it.

It is worth considering a commercial or business policy. This sort of policy would protect your office contents against fire, theft, water damage and other specified risks.

Many multimedia artists have laptops, tablets or transportable computers and other equipment such as cameras, DAT recorders, or video cameras. If you transfer such equipment from your workplace to home you should consider insurance cover that protects you against theft from your vehicle or damage in transit. Transit insurance is costly but provides better cover than general property or business insurance. Consider whether you can extend your equipment and office contents cover to protect you when transporting equipment. Be sure to inform the insurance company of the specific activities, including the use of equipment outside of the studio.

Is spillage onto your computer covered?

In many business insurance policies, spillages are covered, whereas in household and contents cover, an 'accidental damage' option would need to be selected for that eventuality to be covered.

12.2 Risk Management – guard your work-in-progress

Insurance companies recommend that you run regular updates of your work onto a hard drive and keep it in a safe place (or save it to the 'cloud'). In the event that your computer is stolen or damaged, you have at least retained your work. Don't forget to document or photocopy your major works.

The freelance status of many multi-media artists and the low funding levels of smaller productions mean that you may not always be able to obtain adequate insurance cover. In recent years insurance has increased markedly both in costs and as a percentage of funding/income, affecting many artists and small companies.

There are a few questions you can ask yourself to minimise risks, or reduce insurance premiums, as follows:

- How can your own activities be modified to reduce risks and reduce your premiums?
- Are there possibilities for self-insurance and covering risks?
- What are the financial considerations of long-term coverage versus short-term savings?
- Can you balance reduced premiums and higher excesses?
- How can you lobby as a group to get cheaper premiums and the advantage of policy packages?

Seek professional advice if you are unsure about the course to follow and consider approaching your professional associations to encourage them to lobby for cheaper premiums.

12.3 Working from home

Developments in information technology have enhanced the ability of artists to work from home. In many instances your home and/or contents will be covered by your building and contents insurance. These insurance products will cover goods such as computers, tablets workstations, books and software when used for domestic purposes. If such items are used for work purposes,

even while at home, the standard insurance products may not cover any damage or loss. It is very important to read and understand the policy wording to ascertain what is covered. In some instances, exclusions will be mandatory, but you may be able to purchase optional/additional insurance cover.

It is unlikely that standard home and contents insurance products will cover loss or damage to information (however kept or stored) and consequential loss (such as loss of income) when the home is used for trade or business. If you are working in multimedia from home these exclusions could render your insurance coverage worthless if the goods used for your livelihood are lost or damaged. It is therefore important that expensive equipment is adequately insured for all foreseeable eventualities. For example, does your policy cover liquid spillage onto a computer or just theft or fire damage? What events do you think are more likely to occur to you?

12.4 Employment for a specific project

If you are employed for a specific short-term project Arts Law recommends that you have a written agreement that covers insurance. A sample clause is:

“Insurance

- (a) The Employer agrees to take out and maintain a Workers’ Compensation Insurance Policy in favour of the Artist.*
- (b) The Employer agrees to take out and maintain adequate public liability insurance cover.*
- (c) The Employer agrees to indemnify the Artist against all or any claims by third parties against the Artist in the course of this contract of employment.”*

12.5 Considerations for e-commerce

If you are a multimedia artist selling work over the internet – what laws must you consider?

- liability for defamation, including vicarious liability for defamation by employees;
- infringement of someone else’s intellectual property rights;
- misleading or deceptive conduct in contravention of the Australian Consumer Law
- compliance with any relevant industry Codes of Practice
- privacy laws – *Privacy Act 1988* and the *Australian Privacy Principles*

12.6 Public liability

If you or your multimedia company run workshops where there could be some risk to the public or if you are working in public domains then you should have this cover.

12.7 Income protection

The different work arrangements of multimedia artists make income protection insurance well worth looking at. If you are employed then you will be covered by your employer’s workers’ compensation cover (see section 4.1). This could be the case with a digital artist working for an animation company. But what happens when the artist is an “independent contractor” or when all that the producer is buying from the writer is the copyright or the licence for reproduction

rights?

If new media artists can demonstrate to an insurance company that they have had a defined and regular income (i.e. consistent earnings over a number of years from their work) then they should be able to acquire income protection insurance cover (see section 4.3). This sort of insurance is worth considering if you have dependants or are paying off a mortgage and can't afford to lose income.

In multimedia, as in other freelance art forms, it may be advisable to think about setting up a servicing company that can act as your employer for insurance and other purposes. This may alleviate some of the problems freelance artists have in their sole trader status. However it can be costly and good financial and legal advice should be sought first.

12.8 Product liability

Any product that is sold – such as a software package or piece of pottery- is expected to be fit for the purpose for which it is sold. If the product is faulty or not fit for the purpose for which it was sold then this may give rise to legal claims under State or Territory and/or Commonwealth laws.

Liability for unsafe products can, through the Competition and Consumer Act (CCA), extend beyond the creator or manufacturer to the importer or retailer. Under the CCA anyone who suffers damage or personal injury from a defective product can claim for compensation.

The Australian Consumer and Competition Commission (ACCC) is responsible for ensuring compliance with the CCA, which is a Commonwealth law and therefore applies throughout Australia.

12.9 Issues facing larger companies and organisations

The issues facing larger multimedia production companies will depend on the area it is working in. If you are developing film or television multimedia, some of the insurance issues will be similar to those covered in Chapter 10 (Film and Screen).

Gaming and animation companies are generally more office based and require similar business cover to other larger companies, including:

Building and contents insurance

The building and its contents (excluding the multimedia works) should be insured for fire, theft and burglary. This would cover office equipment and the building and fittings. Look at minimising risks through management methods (see Chapter 3). Some premises require this cover before they can be leased.

Damage and theft to works

Permanent collections of work can be insured against fire, theft, and burglary. It is important to ensure you have full replacement value cover, otherwise you may be underinsuring. You would be required to give security details to obtain this cover. Valuation must be by an expert.

For temporary or travelling works, insurance can be taken out for articles on loan or in transit. If you are storing works for artists then your agreement with the artists should specify who is responsible for cover.

You should also ensure that you are covered for theft or damage to work in progress and for work stored electronically.

Cyber Insurance

In a more interconnected world where storage of large assets online has become the norm, there is an increased risk of cyber criminals infiltrating the networks of multimedia businesses and stealing business and/or client digital IP, private information or finances. A cyber security breach can damage a multimedia business's reputation, result in loss of clients' sensitive media assets and stall the entire workflow required for a multimedia business to generate revenue.

While cyber breaches may not be able to be prevented, cyber security insurance is rapidly becoming one of the most important types of insurance that a multimedia focused business may need to respond to a cyber incident, recover any loss and protect it against legal action resulting from a cyber breach.

The risk of a cyber security breach is a particularly important consideration for multimedia focused businesses, which often involve the use of many digital assets which may be commercially sensitive and result in large losses to clients if breached. Additionally, multimedia professionals can often work entirely online; potentially making employees more susceptible to cyber security risks such as fraud and phishing.

Cyber security insurance can cover you for:

- forensic investigation;
- data restoration;
- customer notification and rectification (for example, if call centres are required);
- indemnification of any penalties imposed by government regulators; and
- ransom negotiation and reimbursement / payment.

Workers' compensation and life insurance

Compulsory workers' compensation insurance and superannuation contributions are required for employees (see Chapter 4). If you have volunteers then you should consider taking out some form of life insurance for them. For community-based (non-profit) organisations this can be obtained at reduced rates through community service bodies.

Public and products liability

Public and products liability is considered to be one of the most important insurance covers for all businesses.

Public and products liability insurance is designed to protect you and your business from the significant costs associated with any legal action as a result of your actual or alleged negligence that has caused third party property damage or personal injury, whilst acting in the course of your business (including employees) or through your products.

You have a duty of care to uphold to your customers, employees, and the general public. If deemed negligent, even without intent, compensation ordered payable to claimants can be substantial and potentially damaging to your financial position.

Public and products liability insurance can cover you for:

- amounts you are required to pay as a result of claims;

- compensation for third party personal injury and/or property damage, arising as a result of an occurrence in connection with your business;
- legal proceedings, including defence costs incurred to defend the claim; and
- most public and products liability insurance policies will also include liability for damage to property under your physical and legal control.

Professional indemnity

Professional indemnity insurance is appropriate if you provide advice or services to customers as it protects you against legal costs and claims by third parties for damages arising from your acts, omissions or breaches of professional duty in the course of your business.

In real terms, this means that if you do something (or neglect to do something) in the course of your work, and a customer suffers injury or financial loss as a result, they may take legal action against you. If you have the right policy, you can defend your business against the claim and prevent financial loss.

Directors and officers

Board members or key officers in your organisation may be financially responsible in the event that the organisation is sued. This responsibility can arise if your organisation is unable to pay its debts. You can insure key people against the risk of their being liable (see Chapter 5).

Motor vehicle insurance

If you own a vehicle (or employees and volunteers use their own vehicles on your behalf) you could be liable in the case of an accident. You need to outline the proposed activities and number of vehicles at the time you take out this cover.

Money insurance/cash in transit

Insurance can be acquired to cover money or other negotiable instruments in the care, custody or control of authorised personnel. Cash in transit insurance covers money going to or from specified locations. It excludes theft by employees.

Fidelity guarantee insurance

This covers losses caused by fraud or dishonesty of employees. Small-scale pilfering can be seen as a loss for which the company might cover itself, but in an organisation where there is a possibility of substantial loss, cover can be arranged for key personnel (e.g. financial managers, paymasters, data managers) or a blanket cover can apply. In areas where intellectual property is worth a great deal, as well as products in development, this cover is important.

Machinery breakdown

This covers loss through the breakdown of any major machinery/equipment in the organisation, including air conditioners, lights etc.

Further reading:

J. Stokes, *Earning a Living in the Visual Arts and Crafts*, Hale and Iremonger, 1997.

ACCC Information Sheet Product Safety

www.accc.gov.au/business/treating-customers-fairly/product-safety

Culture: New Media – Protocols for Producing Indigenous Australia New Media, Australia Council, 2012

Download:

www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/atsia_indig_media.pdf

Contacts:

National Product Liability Association www.apla.com.au

Australian Industry Group www.aigroup.asn.au. Tel: 03-9867 0282

Australian Consumer and Competition Commission

www.accc.gov.au. Tel 1300 302 502

QBE insurance – no page for product liability

Screen Tasmania

www.screen.tas.gov.au Tel: 02 – 9332 2408

Screen Territory, Northern Territory Government – www.screenterritory.nt.gov.au

Tel: +618 8999 6302

Peak associations:

Australian Interactive Media Industry Association (AIMIA) Inc.

Tel: (03) 9093 7111w

www.aimia.com.

Australian Network for Art and Technology (ANAT)

ANAT is the peak body for advocacy and networking for artists working with technology.

Tel: 08 8231 9037 www.anat.org.au

Umbrella Groups:

Synapse

An online database encouraging relationships between artists and scientists, and with an online gallery developed by ANAT.

www.synapse.net.au

eMERGE CMC, Impart, QANTAM are CMCs - joint venture Co-operative Multimedia Centres between commercial organisations and universities working in the area of multimedia.

www.emerge.com.au; www.impart.com.au; www.qantm.com

Australian Computer Society

www.acs.org.au

Communication Alliance

Tel: (61)2 9959 9111 www.commsalliance.com.au

Australian Cyber Emergency Response Team – evaluates global computer network threats and vulnerabilities.

Tel: (07) 3365 4417 [www. Auscert.org.au](http://www.Auscert.org.au)

Australian Information Industry Association

Tel: 02-6281 9400 www.aiia.com.au

Game Developers' Association of Australia

www.gdaa.com.au

Complaint bodies:

Telecommunications Industry Ombudsman

Tel: 1800 062 058 www.tio.com.au

Appendix I Glossary of Insurance Terms

The following glossary is in plain English and is not intended to provide a comprehensive definition of all relevant insurance and legal terms. Where applicable practical examples are provided to help illustrate the definitions. For those who want more detailed definitions please refer to the further readings section. You should note that when reading insurance policies the words with special meanings will be defined in the policy and only those definitions apply within your insurance policy.

ACT OF GOD

A natural event or disaster that is not caused by human forces, but rather by physical forces and nature e.g. floods, earthquakes, avalanches.

Example: an outdoor concert is cancelled due to an Act of God if heavy rain causes flooding. If the concert is cancelled due to flood water from a burst water main then this is not an Act of God.

AGENT

The intermediary between the insurance company and the insured who deals personally with customers or sells the policy. An agent usually works for or represents the insurance company and receives commission on the insurance sold. The agent does not issue the policy.

AVERAGING CLAUSE

This is also known as a 'co-insurance' clause, A clause in a property insurance contract, which is intended to prevent under-insurance. If the property is underinsured (i.e. not insured for the full value of the property) then the insured will bear the proportion of any loss by which the property is under-insured. In certain cases such a clause will not be effective where 80% or more of the value of the property is insured.

Example: A computer used for multimedia work that is worth \$2000 is only insured for \$1000. If the computer is damaged and the cost of repair is \$500 then the insured may only receive \$250 because the computer was only insured for half its value.

BROADCOVER

Indicates a particular form of wording in an insurance policy, which provides for the broadest possible cover and offers less exclusions.

BROKER

A person who represents purchasers of insurance. Unlike an agent, a broker does not represent one particular insurance company. The broker is the independent negotiator between insured and insurer so as to give advice, make recommendations and introduction.

CANCELLATION OF POLICY

The termination of the contract by one or both of the parties. Policies can be cancelled for a variety of reasons, including those set out in legislation (such as the *Insurance Contracts Act*).

CLAIM

A policy holders' demand for payment of a loss suffered under the insurance policy.

COMMISSION

Money paid to insurance brokers and agents by insurance companies for selling policies.

CONTRACT

An agreement between two or more parties that is binding and can be enforced by law. A contract exists when three elements are met, including:

- 1 An offer to give or do something by one party and acceptance of that offer by another.
- 2 Consideration – the exchange between the parties of something valuable to each of them.
- 3 An intention by the parties to have entered into a legally binding agreement. This would normally occur between business parties but not normally between friends or in domestic situations.

Example: a physical theatre company wants to hire a theatre. A theatre venue charges \$1500 per week with a minimum three week run. The physical theatre company accepts the offer and agrees to pay \$4500 for exclusive use of the venue. The venue is then provided to the physical theatre company for three weeks. The parties will be held to have entered into a contract even if they have not entered into a written agreement.

COVER NOTE

A note which provides immediate and interim cover while the insurance company assesses the insurance application. The temporary cover will be for a specified period or until a longer term insurance policy is approved. These are less commonly used now.

Example: a pottery studio buys a second hand van for transporting materials. The studio can immediately obtain a cover note for comprehensive insurance for the van over the telephone for a period of 28 days. During the 28 period the studio will formally apply for a comprehensive insurance policy.

DAMAGES

The amount of money paid by one party to another as compensation for loss incurred by other party as a result of the former party's conduct.

DEDUCTIBLE

See **EXCESS**.

DEDUCTABLE GIFT RECIPIENT (DGR)

DGR status allows an organisation to attract gifts or donations that they, as a donor, can claim as a tax deduction.

DEFINED EVENTS

A defined event is determined by the particular contract of insurance and is an occurrence or thing, the risk of which is protected against by your insurance policy.

Example: the policy taken out by promoters of an outdoor concert includes Acts of God as a defined event. If the concert is cancelled because of flooding caused by heavy rains then this would be a defined event and there is insurance protection. However, if the concert were cancelled due to flood water from a burst water main this would not be an Act of God.

DUTIES OF DISCLOSURE

- (a) Duty to disclose all facts that are "material" to the risk. Both the insurance company and the insured have a duty to inform the other party, before a contract of insurance is entered into, of all relevant matters to the risk that is being insured. This duty also extends to the time when a

claim is made against the insurance policy, at the time of renewing the policy, or when any changes or endorsements are made.

- (b) Duty of intermediary to disclose. An insurance intermediary (either broker intermediary or agent) must disclose any relationship that exists between the broker and the insurer, so that the broker does not act against the interests of either the intending insured or the insurer.

DUTY OF UTMOST GOOD FAITH Each party to an insurance contract must act towards the other in good faith, including disclosing all information which the other party would need to know to properly assess risk or to determine whether to purchase the insurance offered or not. **ENDORSEMENT**

The recording on a policy or an annexure to it of any alteration to the terms or conditions of the insurance contract. For example, the inclusion of a clause in a public liability policy covering volunteers.

EQUITABLE RIGHT/INTEREST

An interest or right that is not strictly legal but will be recognised by a court with an equitable jurisdiction. Justice is administered according to fairness rather than the strict formulated rules of the law.

Example: under a hire purchase agreement, the hirer of the goods only has an equitable interest because until the final hire purchase payment is made the hirer is not the owner. Until that time, the hire purchase company is the owner of the property and has legal rights in the property.

EXCESS

The portion of an insured loss that is borne by the policy holder (the insured) before he or she is entitled to recover from the insurance company. This is also known as a Deductible. Usually this is payable on lodgement of the claim.

EXCLUSION CLAUSES

A provision in a policy limiting the insurer's liability in terms of an event, person or property. For example, property that is damaged by flood waters is sometimes excluded from insurance policies.

FRAUD

Fraud is defined at law as a false representation made knowingly or without belief in its truth, recklessly or carelessly whether it be true or false. A fraudulent claim or fraudulent non-disclosure of material facts could render an insurance policy void (that is, unenforceable) and any claims under that policy would also be unsuccessful.

FORFEITURE

A clause in the policy that applies where there is a fraudulent claim, which means that the insured loses all rights under the contract of insurance.

A typical example: if the insured makes any claim knowing it to be false or fraudulent, as regards amount or otherwise, the insurance shall become void and all claims thereunder shall be forfeited.

GOODS AND SERVICES TAX (GST)

The GST is a Commonwealth Government tax of 10% that is added to the cost of most goods and services.

INDEMNIFY

A promise to stand in the place of another party, to reimburse a party in the event that some anticipated loss actually occurs, or to compensate the person once the loss has been sustained. The aim is to restore the party to the position they were in prior to the loss.

INDEMNITY INSURANCE POLICY

An indemnity insurance policy insures for the replacement cost of the property less a wear-and-tear factor.

INSURABLE INTEREST

The legal or equitable interest held by the Insured in the insured property or life. It is no longer required in respect of most classes of general (non-life) insurance. In order to recover, an insured must suffer economic or pecuniary loss as a result of an insured event.

INSURANCE INTERMEDIARY

A person who, for a fee, arranges contracts of insurance between the intending insured and the insurer. Intermediaries include insurance **BROKERS** (who acts for the insured) and insurance **AGENTS** (who act for the insurer).

INSURED/POLICY HOLDER

The owner of an insurance policy i.e. the person who has obtained coverage for his/her life, health, property or liability in exchange for the payment of periodic premiums.

INSURER/INSURANCE COMPANY

The insurance company that issues the policy of insurance or the party who accepts the risk to be insured.

INTERIM COVER ARRANGEMENT

See **COVER NOTE**.

LIABILITY

Liability is imposed on a party by law and means they have obligations to others for their actions. For example, if a person commits a crime or tort, or breaks an agreement or contract, they are described as liable or responsible for those actions.

LIFE INSURANCE

Various types of insurance that protect against the risk of death, injury or illness of the policy holder/insured.

MISREPRESENTATION

A statement or conduct which conveys a false or wrong impression. A misrepresentation may be false (known to be false), negligent (no reasonable grounds for believing it to be true) or innocent (honest mistake).

MULTI-RISKS INSURANCE

Provides cover for accidental loss or damage to cameras, lighting and electrical equipment, props, sets and wardrobe and Section can be extended to include office contents whilst being used on the production.

NO-CLAIM BONUS

This is a reward or bonus the insurance company gives the insured if a claim is not made under their insurance policy. The bonus generally comes in the form of reduced premiums for the following year. If the no-claim bonus is lost, the premiums will rise the next year. No claim bonuses are typically found in household and motor vehicle policies.

PECUNIARY OR ECONOMIC LOSS

The financial loss that is suffered due to damage caused to a person or a piece of property. In the case of an insurance contract, pecuniary or economic loss would have to result from a 'defined event' to be covered.

POLICY

The insurance contract between the insurer and the insured. The legal document issued by the insurer to the insured which evidences the terms and conditions of the contract of insurance.

POOL

A group of insurance companies that agree to carry a particular type of risk jointly. Since they share expenses and the risk, they also share the premiums.

PREMIUM

The amount payable by a policy holder to the insurer, which provides the consideration for the company assuming the risk.

PROPOSAL FORM

The application form to be completed by the person applying for insurance, which contains questions that require answers from the intending insured to be used in connection with a proposed contract of insurance. On the basis of the information provided, the insurance company is able to assess whether it will accept the risk and issue an insurance policy.

PUBLIC LIABILITY INSURANCE

Type of insurance which covers a party's liability to others for injury and damage caused by them. It can also extend to owners of leased premises for injury caused to the public as a result of the state of the building or its surrounds.

REINSTATEMENT INSURANCE

Type of insurance that covers the replacement of what is lost, or repair of what is damaged, providing an alternative to a monetary payment. No deductions are made for the depreciation in value of the property due to age, wear or tear.

REINSURANCE

The act or process by which insurance companies spread risk by re-insuring with other insurance companies.

RELEASE FORM/WAIVER

A document whereby one party releases or forgoes its rights against another. A release form may also be used to settle or finalise a claim for compensation made by one party against another. This type of release would state that the first party has paid money or provided services to a second party (who suffered loss), that the second party acknowledges this, and that this now settles all claims the second party can make against the first.

Example: an actor who wants to do his or her own stunts on a film may be asked by the film production company to sign a release covering the actor in the event of any injury that might result from doing the stunts. Whether the release would legally protect the production company from being sued by the actor in the event of injury is another matter.

REPLACEMENT COST

The cost of replacing property without deductions for depreciation.

REPLACEMENT/NEW FOR OLD POLICIES

Type of insurance which promises to pay the insured the replacement cost of damaged or destroyed property rather than its actual market value. No deductions are made for the depreciation in value of the property due to age, wear or tear.

RISK

This refers either to the person or thing insured or to the uncertainty, danger or chance of loss in respect of which protection is provided by the policy.

RISK MANAGEMENT

The means by which a party decides how to deal with a risk to which they are exposed. Steps may be taken to avoid or prevent the loss or the risk may be transferred to an insurer.

SELF INSURANCE

Occurs when an individual or group chooses not to buy insurance coverage and instead assumes the risk themselves.

SPECIFIED RISK POLICIES

An insurance policy that covers only the risks listed in the policy.

STAMP DUTY

Stamp duty is a tax levied by individual State and Territory governments on certain documents and transactions. The tax can be levied as a percentage of the value of the contract or a flat rate per transaction.

STANDARD COVER

For some insurance types the insurer must pay a minimum amount prescribed by the *Insurance Contracts Act 1984* (Cth) even if the policy nominates a lesser amount. An insurer can only avoid a minimum amount if, before the policy begins, the insured is informed in writing of the difference between the insurer's policy and the standard cover.

SUBROGATION

The assumption of one party's rights and duties by another such that an insurer, after settling a claim in full, is entitled to sue in the insurance's name any third party who was responsible for the loss.

Example: puppets worth \$5000 stored in a rented warehouse are stolen after a door was carelessly left unlocked by an employee of the storage business. The insurance company compensates the puppet owner for the theft and then sues the owner of the storage business for negligence to recover the money they have paid out. The insurance company is said to "stand in the shoes" of the insured, the owner of the puppets in this instance.

TORT

Describes an act that causes harm to a person whether intentionally or not, which may be by way of injury or damage for which the victim is entitled to some form of redress. The tort committed may have been the result of an omission to do something required by law, or alternatively doing something that infringed someone else's rights under the law. The law of torts is distinct from contract law.

Example: a theatre company hires a venue. The stage manager for the production is electrocuted by faulty wiring recently installed by an electrician sub-contacted by the venue. The electrician could be liable in tort to the stage manager for the injuries suffered due the faulty new wiring. In contract law there is no legal relationship between the stage manager and the electrician sub-contacted by the venue.

UNDERWRITER

Term used to describe the insurer. More specifically it can refer to the person in an insurance company who decides the premium to be charged and the terms of a policy to be issued.

WORKERS' COMPENSATION INSURANCE

Insurance that covers an employer's responsibilities for injuries, disability or death of persons employed by them.

Further reading:

Online legal dictionaries can be located at <http://www.duhaime.org/LegalDictionary.aspx>

Black's Law Dictionary

Butterworth Australian Legal Dictionary

Osborn's Concise Law Dictionary

Appendix II Arts friendly insurance brokers, agents, and companies listed by State and Territory

National Insurance Brokers Association (02) 9964 9400 or niba@niba.com.au

The following points are relevant to all insurers listed in this document:

- Insurance policies are provided on an individual basis. In each case, broker or insurer will assess nature of the risk to be insured (including in the case of public liability, the number of people attending relevant event or performance), the business or activities of the person/ company seeking insurance, turnover
- The cost of premiums will vary from state to state due to different stamp duty liabilities in each state.

AON Risk Services Australian Ltd

<https://business-insurance.aon.com.au/Professions/Entertainment.aspx>

- Various special insurance packages available for dance and music teachers. Available though the NSW office.
- Professional indemnity insurance and other types of insurance particularly relevant to performers (e.g. equipment/ instrument, cancellation) and others involved with the arts e.g. teachers.
- Products, coverage and costs may vary from state to state
- Public liability insurance;

New South Wales

Allianz Australia Insurance Group

Tel: 13 26 64

Fax: (02) 9390 6455

www.allianz.com.au

- Workers' compensation and domestic insurance available directly;
- Other insurance products through brokers only.
- Public liability not available directly, only through brokers.

Insurance Advisernent Australia Pty Ltd

Contact: Tristan Walker

Tel: (02) 9964 7336

Fax: (02) 9954 1809

www.insuranceadviser.net

- General insurance but prefer to deal with corporates – companies with \$5-10million annual turnover.
- Can arrange public liability

American Home Assurance Co (American International Group)

Tel: 1800 222 123 or (02) 9240 1711

Fax: (02) 9240 1722

www.aig.com.au

- General commercial insurance (all types) but not directly – only through brokers
- Public liability available but not directly – only through a broker

AON Risk Services Australia Ltd

Tel: (02) 9253 7000

Fax: (02) 9253 7267

www.aon.com.au

- All types of insurance with particular schemes available for the entertainment industry;
- Safe Dance insurance scheme 'Ausdance' available for dance schools (through Parramatta office);
- Music teacher insurance scheme for people who teach music in their homes;
- Line dancing teachers' insurance scheme;
- Discounts on insurance products available for APRA members;
- Discounts also available for cinematographers who are members of ACA;
- Other types of insurance specifically targeted at the entertainment industry including cancellation insurance, equipment/instrument (immediate cover available)
- Public liability insurance – basic premium of approx \$1250 for \$5mill-\$10million cover;
- Insurer requires at least one week to arrange.

Carrington Whitaker Insurance Brokers t/as The Musicians Insurance Brokers

Tel: 1800 244 350 or (02) 9525 6877

Fax: (02) 9526 2667

email: dennis.whittaker@apfs.com.au

- Music industry specialists who can arrange comprehensive insurance for entertainers including e.g., accidental loss/ damage, theft & transit insurance, cancellation.
- Can arrange public liability insurance for musicians, bands DJs singers, music teachers (and others);
- For public liability in NSW they are quoting: for a group of 1 – 3 performers \$547.25 for \$5million cover and \$720.30 for \$10million cover; for 4 – 6 performers, \$662.75 for \$5million cover and \$893.75 for \$10million cover.
- These amounts will vary in other states and may also vary depending on the particular circumstances

Chubb Insurance Company of Australia Ltd

Tel: (02) 9273 0100

Fax: (02) 9273 0101

- Offer a broad range of insurance products and would be able to cover most types of risk in the entertainment industry.

- No longer directly deal with public liability insurance. Must go through broker.

Jardine Lloyd Thompson Pty Ltd

Tel: (02) 9290 8000

Fax: (02) 92622627 or 9299 7280

www.jlta.com.au

- Prefer to deal with ongoing commercial insurance needs of companies (eg production houses) , rather than individual entertainers and one off performances;
- Only suitable for commercial groups. Do not do any work for NFPs;
- All forms of insurance (could include cancellation, abandonment, non appearance etc – although are not specialists in this area)
- Public liability available as part of a full risks package – not a one-off.
- Their products, cover and rates may vary from state to state.

Sentinel Underwriting Agency

Contact: Paul McKeough

Tel: (02) 9930 9588

Fax: (02) 9954 1585

- No professional indemnity
- Can arrange insurance for both individuals and corporates (including NFPs)
- Specialist insurance cover available for cancellation and non-appearance, also prize indemnity).
- Public liability available for small scale conferences, exhibitions, concerts and plays (small = under 300 people).

WBW Insurance Broking Group

Tel: (02) 9411 7511

Fax: (02) 9411 7918

- Generally refer calls for arts related insurance to AON due to greater specialisation.
- Public liability and professional indemnity insurance for small business and medical.

Willis Australia Ltd

Tel: (02) 9285 4000

Fax: (02) 9283 5268 or 9264 5437 (entertainment)

www.willis.com.au

- Can provide insurance packages for corporates, but will also provide one-off insurance deals for larger venues (e.g. performance or exhibition);
- Prefer to deal with larger galleries and institutions
- However can arrange insurance for independent film makers
- Do offer public liability insurance for entertainment industry

Northern Territory

AON Risk Services Australia Ltd

Tel: (08) 8981 9400

Fax: (08) 8981 1706

www.aon.com.au

- All aspects of arts/entertainment insurance cover insurance
- Public liability – see AON above (NSW)

Queensland

AON Risk Services Australia Ltd

Tel: (07) 3223 7400

Fax: (07) 3223 7545

www.aon.com.au

- Safe Dance insurance
- Film/video
- Television/ Entertainment
- Music; Theatre; Literature
- Visual Arts
- Public liability – see AON above

The Cameron Group

Tel: (07) 5530 3417

Fax: (07) 5530 3959

- Music and entertainment industry
- Can arrange public liability premiums for musicians and entertainers, but at a cost.

Elders Concord Insurance Limited

Tel: (07) 4152 4422

Fax: (07) 4153 1507

- Can offer general insurance for limited areas including: arts studios (but not galleries); art and craft supply shops; photographic studios; and music teachers.
- Still do some public liability but do not offer stand-alone public liability insurance.

Jardine Lloyd Thompson Pty Ltd

Tel: (07) 3246 7555

Fax: (07) 3246 7590

www.jlta.com.au

- Film /entertainment industry
- Stage
- Concerts
- Dance
- Cancellation
- Abandonment
- Non appearance

- Public liability – see Jardine above

Wenck Pty Ltd

Tel: (07) 3031 1620

Fax: (07) 3031 1630

- Organising general insurance for studios, music teachers etc is generally not a problem.
- Can arrange public liability insurance for musicians and entertainers (at a higher premium) but there are difficulties in organising standalone public liability insurance.

South Australia

AON Risk services Australia Ltd

Tel: (08) 8301 1111

Fax: (08) 8301 1100

www.aon.com.au

- Safe dance insurance
- Association liability
- Volunteer insurance
- Professional indemnity
- AON will consider each area set out for public liability.
- To determine whether public liability insurance can be provided their underwriter will need as estimated number of people who will be attending or involved.
- As a guide an underwriter will usually work out the cost of a premium at \$3.00 per every head of attendance.
- Premiums for public liability can range from \$800 to \$5 mil.

Aradlay Insurance Brokers Pty Ltd

See Aradlay above

Marsh Pty Ltd

Tel: (08) 8211 7655

Fax: (08) 8211 8785

www.marsh.com.au

- Deal with general insurance to varying degrees:
- Film
- Museums/Galleries
- Cultural institutions
- Public liability – see Marsh above

Jardine Lloyd Thompson Pty Ltd

Tel: (08) 8224 0288

Fax: (08) 8223 6903

www.jlta.com.au

- Do not deal with Arts industry in this state

- Public liability – see Jardine above

Webster Hyde Heath Insurance Brokers

Tel: (08) 8362 5553

Fax: (08) 8362 5788

www.whhib.com.au

- Specialises in film and television: tv series, feature films, producers, directors, etc
- Can arrange public liability premiums for musicians and entertainers

Tasmania

AON Risk Services Australia Ltd

Tel: (03) 6234 9770

Fax: (03) 6234 9435

www.aon.com.au

- All entertainment/arts insurances dealt with by Sydney office

Victoria

AON Risk Services Australia Ltd

Tel: (03) 9211 3000

Fax: (03) 9211 3500

www.aon.com.au

- All arts/entertainment insurances dealt with by Sydney office (see entry under NSW)

Holland Insurance Brokers Pty Ltd

(contact: Brian Holland)

Tel: (03) 9775 2355

Fax: (03) 9775 2832

- Specialise in film industry – all budgets (specialists in low budget film insurance packages)
- Can arrange public liability insurance for film makers. Would refer performers to AON

Jardine Lloyd Thompson Pty Ltd

Tel: (03) 9614 4455

Fax: (03) 9614 3184

www.jlta.com.au

- See entry under NSW
- General insurance for any business including professional indemnity;
- Will also deal with individuals
- Can organise public liability insurance

Max Barlow c/- BGS Insurance Brokers

Tel: (03) 5973 4656 or 0403 175690

Fax: (03) 5975 3698

<http://www.bgsins.com/>

- Insurance brokers for all art forms, special events, film etc;

- Can arrange most types of insurance one-offs and packages relevant to these areas including professional indemnity
- Can arrange public liability insurance

Western Australia

AON Risk Services Australia Ltd

Tel: (08) 9429 4444

Fax: (08) 9429 4490

www.aon.com.au

- Safe dance insurance
- Film/video
- Television & entertainment
- Music
- Theatre
- Literature
- Visual Arts
- Museum/galleries
- Cultural institutions
- Festivals
- Special events
- General insurance
- Public liability – see AON above

Dry Shand Insurance Brokers Pty Ltd

Tel: (08) 9489 6666

Fax: (08) 9489 6600

- Film and Theatre; visual arts; art galleries; general commercial broking; specialise in aviation
- Are able to organise public liability insurance for areas listed. Speak to either Craig Shand or Clare Culverhouse.

Hammond Insurance Broking Pty Ltd

Tel: (08) 9390 5711

Fax: (08) 9390 7711

- Fine art, collectables, antiques
- Music and theatre; Dance and film; Museums/galleries; Cultural institutions; General insurance; Cancellation; Pecuniary loss indemnity
- Can organise public liability insurance. Can possibly organise stand-alone public liability insurance – depends on facts in each circumstance. Are difficulties in organising public liability insurance in areas such as public-art.

Jardine Lloyd Thompson Pty Ltd

Tel: (08) 9426 0444

Fax: (08) 9426 0999

www.jlta.com.au

- Music
- Dance
- Theatre
- Film/video
- Television
- General insurance
- Cancellation & abandonment
- Film insurance
- Contingency covers
- Public liability – see Jardine above

Marsh Pty Ltd

Tel: (08) 9421 5666

Fax: (08) 9289 3880

www.marsh.com.au

- Film
- Museums/Galleries
- Cultural institutions
- General insurance
- Public liability – see Marsh above

Appendix III Arts Law Centre of Australia

The Arts Law Centre of Australia is the national community legal centre for the arts. Arts Law provides specialised legal and business advice and referral services, professional development resources and advocacy for artists and arts organisations, including targeted services for First Nations artists.

Services:

- Telephone legal advice for eligible artists and arts organisations
- Document review service – for subscriber artists and arts organisations
- Lecture, seminars and community education services
- General referrals to a suitably qualified solicitor
- Publications – sample contracts, checklists, free information sheets
- Advocacy, research, policy and law reform

Subscriptions to Arts Law include a number of benefits: 5 telephone legal advice sessions, access to the document review service and significant discounts on publications. Subscription fees are essential support for Arts Law's delivery of services. Subscription and purchases from Arts Law may be tax deductible. Donations are gratefully received.

Contact details:

Tel: (02) 9356 2566

05 1800 221 457 (toll free)

Fax: (02) 9358 6475

Email: artslaw@artslaw.com.au

Website: www.artslaw.com.au

Arts Law gratefully acknowledges the ongoing financial assistance of the Commonwealth Government through Creative Australia, its principal arts investment and advisory body; through the Office for the Arts 'Indigenous Visual Arts Industry Support program; and the Attorney-General's Department. We are supported by the ACT Government through artsACT, the NSW Government through Create NSW, the Northern Territory Government through the Department of Tourism & Culture – Arts NT, the Queensland Government through artsQueensland, the South Australian Government through Arts South Australia, the Tasmanian Government through Arts Tasmania, the Victorian Government through Creative Victoria and Film Victoria and the Government of Western Australia through the Department of Local Government, Sport and Cultural Industries.

Appendix IV Free Legal Advice

In each State and Territory there are a number of options for obtaining free or low cost legal advice, representation and/or referral information. These options include community legal centres, Aboriginal and Torres Strait Islander legal services, legal aid commission, and pro bono (Latin for the 'for good') schemes whereby private law firms do work for free or at a reduced cost.

Legal issues concerning insurance can sometimes be answered by Arts Law. However, in many instances, a local community legal centre or legal aid commission will also be well placed to provide advice. There is also a large amount of legal information that can be accessed over the internet, for example, Commonwealth, State and Territory legislation and cases can be found at www.austlii.edu.au.

National

Community Legal Centres Australia (CLCs Australia)

Tel: 02 9160 9500

<https://clcs.org.au/>

Contact CLCs Australia for referral information for your nearest generalist or specialist community legal centre.

Australian Pro Bono Resource Centre

A policy and education body – it does not give legal advice.

Tel: unknown

<https://www.probonocentre.org.au/>

Women's Legal Services Australia

Tel: Unknown

www.wlsa.org.au

The peak body for CLCs specialising in womens legal services – no legal advice given

Economic Justice Australia

Tel: Unknown

<https://www.ejaustralia.org.au/>

The peak body for CLCs providing specialist advice to people on their social security issues and rights. Links to CLCs advising about Centrelink

Australian Insurance Law Association

Conducts seminars, conferences and promotes discussion and debate on insurance law.

Tel: [1300 699 140](tel:1300699140)

www.aila.com.au

Justice Connect

www.justiceconnect.org.

ACT

Legal Aid ACT Office

Tel: 1300 654 314 or (02) 6243 3411

www.legalaidact.org.au

ACT Law Society

Tel: (02) 6274 0300

<https://www.actlawsociety.asn.au/>

New South Wales

Legal Aid NSW

<https://www.legalaid.nsw.gov.au/>

Law Access – Legal aid NSW

Tel: 1300 888 529

<https://www.legalaid.nsw.gov.au/>

Office of the NSW Legal Services Commission

<https://olsc.nsw.gov.au/>

Law Society of NSW

Tel: (02) 9926 0333

<https://www.lawsociety.com.au/>

Aboriginal Legal Services NSW

www.alsnswact.org.au

Northern Territory

Legal Aid Commission

Tel: 1800 019 343

www.legalaid.nt.gov.au

Law Society NT

Tel: (08) 8981 5104

<https://lawsocietynt.asn.au/>

Queensland

Legal Aid Queensland

Tel: 1300 651 188

www.legalaid.qld.gov.au

QLD Law Society

Tel: [1300 367 757](tel:1300367757)

<https://www.qls.com.au/>

South Australia

Legal Services Commission

Tel 1300 366 424 or (08) 8463 3555

www.lsc.sa.gov.au

Law Society of South Australia

Tel: (08) 8229 0200

<https://lawsocietysa.asn.au/>

JusticeNet SA

www.justicenet.org.au

Tel: 08 84010 2280

Tasmania

Tasmania Legal Aid

Tel: 1300 366 611

www.legalaid.tas.gov.au

Law Society of Tasmania

Tel: (03) 6234 4133

<https://www.lst.org.au/>

Victoria

Victoria Legal Aid

Tel: 1800 792 387

www.legalaid.vic.gov.au

Law Institute of Victoria

Tel: (03) 9067 9311

<http://liv.asn.au/web>

Victoria Law Foundation

The Foundation publishes a directory of pro bono, low cost and free legal services in Victoria.

www.victorialawfoundation.org.au

Western Australia

Legal Aid Western Australia

Tel: 1300 650 579

www.legalaid.wa.gov.au

Law Society WA

Tel: (08) 9324 8600

www.lawsocietywa.asn.au

Law society WA - Law Access

www.lawsocietywa.asn.au/law-access/

Appendix V Who's who in the insurance industry

Insurance Council of Australia (ICA)

The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Its members represent more than 90% of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. March 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$45 billion per annum and has total assets of \$123.6 billion. The industry employs approximately 60,000 people and on average pays out about \$142 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

Tel: 1800 884 934

www.insurancecouncil.com.au

National Insurance Brokers Association of Australia (NIBA)

NIBA is the peak body of the insurance broking profession in Australia and represents around 360 member firms and more than 2000 individual Qualified Practising Insurance Brokers throughout Australia. In total NIBA represents an estimated 90% of all insurance brokers in Australia.

NIBA administers the Qualified Practising Insurance Broker, which is the highest professional accreditation. Members of NIBA are bound to act in accordance with a code of conduct.

Tel: 02 9964 9400

www.niba.com.au

Australian Prudential Regulation Authority (APRA)

APRA is the prudential regulator of banks, insurance companies, superannuation funds, building and friendly societies, and credit unions.

Tel: 1300 558 849

www.apra.gov.au

Australian Securities and Investments Commission (ASIC)

ASIC is an independent government body that regulates and informs the public about Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit. ASIC was established by the *Australian Securities and Investments Commission Act* and commenced operation in 1991.

Tel; 1300 300 630

www.asic.gov.au

Financial Ombudsman Service

The Financial Ombudsman Service provides accessible, fair and independent dispute resolution for consumers and financial services providers

Tel: 1800 367 287

www.fos.org.au

Australian Financial Complaints Authority

From 1 July 2018, the Australian Financial Complaints Authority (AFCA) replaced the Superannuation Complaints Tribunal. The AFCA is an external dispute resolution organisation that deals with insurance, banking, credit and superannuation complaints against member financial services organisations.

Tel: 1800 931 678

www.afca.org.au