

13. Legal Help

This section includes overview of the most common legal topics that apply to the proper running of your Club. This information is general only and should not be taken for legal advice as advice can change depending on your Club's particular circumstances. This section is also not exhaustive. We've tried to cover the most relevant legal information for Clubs, but it would be impossible to anticipate everything that Clubs may need to know.

Contracts

Your Club may enter contracts often, from hiring venues for a night out to purchasing t-shirts to wear at your next fundraiser. You might not think twice about it, but you should. **Contracts are legal documents with real consequences and liabilities attached.** Executives (and other Club members who might help organise events or Club purchases) need to be very careful about signing any commercial agreements in their own name for Club business.

You should:

- Always read any document before signing it
- Never be forced into signing a contract
- Get advice if you don't understand what your rights and obligations are
- Correctly identify the parties:
 - If your Club is unincorporated, don't say otherwise
 - Never represent that the Club is acting on behalf of UNSW,
 - Make sure the contract states the complete name of the business (and ABN)
- Pay attention to:
 - the amounts to be paid and by whom
 - any specific dates where performance is required
 - the duration of the agreement
 - penalties for breaching terms or cancelling the contract
 - termination clauses
 - whether any of the written terms are not what was agreed to verbally
- Never sign a contract if the Club can't comply with the terms

- Never ever pay an invoice out of a personal bank account. If the Club funds aren't enough to cover the amount needed, don't sign the agreement

Clubs may also want to consider incorporation where the Club's liability under the contract could go beyond Club's assets. Neither Arc nor UNSW will protect the Club (and this means the Executive!) from a breach of contract, so if your Club can't comply with the terms and conditions agreed to, Executives can be held personally liable.

If someone is paying money to the Club...

If you offer services to other companies for payment, make sure you have a written agreement setting out your costs, the specifics of what you have agreed to do, important dates for payment, and any penalties for cancellation. You should also include an invoice and specify how payment is to be made.

Privacy

In the course of normal operations, your Club may need to collect personal information about individuals (Club Executives, Club members, event attendees, petition signatories). This includes contact information, medical information (e.g. if attending a camp) and bank account details. When collecting, using and storing this information, it's important to have in mind a few key factors to reduce the risk of misuse, including purpose and access.

Private information should only be used for the purpose for which it was collected (e.g. information in a membership list should not be given or sold to an external organisation without the permission of the individual), so if you want to disclose your membership list to a national body that your Club is a branch of, make sure to state this in your membership form. If you sign up members outside of Arc's online platform, you should disclose that limited parts your membership list is shared with Arc of funding and administration purposes.

It's also worth examining whether you need all the information your Club collects and for how long. If was collected for a specific purpose and that purpose has passed (e.g. you no longer need the medical information of camp attendees once the camp has taken place), then it's a good idea to get rid of it. For digitally stored information that means deleting files and backups. In the case of hard

copy forms or printouts, you should dispose of the records securely (there is a shredder in the Clubs Space that you can use).

Deleting/destroying private information when it is no longer needed also helps to address the issue of access, however it's also important to be aware of who does have access to the information while it is in use and restrict it to only those to need to access it readily. For example, if you are conducting a survey or asking people to sign a petition, these documents containing private information should be stored securely (e.g. no completed forms left in Arc's general Club storeroom) so that it cannot be taken by an unauthorized person and misused. You could consider scanning the documents and destroying the originals. For digital records kept by the Executive team, consider which roles actually need access to the information, and when those Executives change over, make sure to remove the access of the old Executive team (e.g. change passwords or remove linked accounts).

Sponsorship & Promotion

Some Clubs may choose to approach external companies for additional (usually financial) support. This arrangement should be documented in a written agreement.

As with any legal contract, it's important to know your rights and obligations before you sign (see Contracts information earlier in this section). You may think that a sponsorship agreement will be a simple exchange of money (for the Club) for advertising/promotion (for the Sponsor) but there are some things you should pay attention to when entering a sponsorship agreement:

- Who are the parties?
- What is the sponsorship fee? When and how is it paid? Make sure these details are clear.
- Is this ongoing agreement or a one-off for a specific event? You need to know when the Club's obligations to the sponsor end.
- What benefits does the Sponsor get in return? Can the Club provide all those benefits?
- Are there any branding requirements to comply with?
- Do you need any other parties' permission? e.g. if the sponsor will come onto campus to set up a stall, you need to check with the Arc Clubs team (in general, a Club's sponsors cannot set up their own stall on campus, but a sponsor can have a *small* presence at a Club's event or stall).

- What does the agreement say about Intellectual Property (IP) ownership? Does each party have to grant the other a license to use their IP?
- Is there an exclusivity clause (i.e. are you limited to only have one sponsor)?
- How can the agreement be terminated? What are the responsibilities of each party if part of the agreement has already been performed?

You need to make sure that the Club can comply with all the terms of the agreement before signing. Be wary of agreements which require action from Arc or UNSW because a Club can't enter agreements on behalf of another party.

Fundraising

Some fundraising appeals require an authority or license. If you are raising money from the general public, you need a license from the Office of Fair-Trading NSW.

Note: a license is not required to collect Club membership fees.

If you're not sure whether your activity requires a license, get advice or go to:

<http://www.fairtrading.nsw.gov.au>

If you are raising money on behalf of an existing charity, a member of the Executive should contact them directly. They may already be an authorised fundraiser and may be able to authorise fundraising activities for the Club under their own license. You will also need permission in writing to collect money on their behalf. The Club may also need to satisfy certain conditions: e.g. branding the charity, providing an income statement, etc. The Club may also be covered by the charity's public liability insurance.

Waivers

Where the nature of your Event might involve a lot of risk, Club members (or whomever is participating) should be asked to sign a waiver of liability before participating.

A waiver is like a warning that there are risks involved in participating (however unlikely they may be) and asking participants if they will assume those risks and participate anyway. It is good practice to use a waiver if there is a chance that participants could get hurt (or suffer property loss) at a Club event (e.g. social sports, bush walking, overnight camps). E.g.

I agree that participation in the event is strictly voluntary and at my own risk.

I agree that all due care has been taken by the organisers and the Club, Executives and Arc will not be held responsible for any damages to personal property, injury or death that may occur during Club events.

Think about the potential risks:

- Is physical fitness or skill important?
- Does the activity require disclosure of medical conditions etc.?
- Is the venue in a remote location where it may be difficult to access emergency services?
- Are participants required to be separated from their personal belongings (e.g. leaving luggage in a cabin during the day on an overnight camp)?

Some activities have an inherent amount of risk that will be assumed by the participant. The *Civil Liability Act 2002* (NSW) limits a person's ability to sue others for personal injury where they engage in a dangerous recreational activity and are injured because of an inherent risk in that activity.

A waiver may not eliminate risk altogether (where injury is due to Club negligence) but it will help to limit liability if something does go wrong.

If you think you may need a waiver, the Arc Clubs team can provide you with a template. You can also get advice, so it can be tailored to your specific event and activity.

Waivers can also be used if the Executive wants to use any photos/video footage of the event for promotional material. Members/attendees can be asked to waive their rights in relation to the use of their likeness (usually called a "release").

Keep waivers in a safe, private location (scanning and emailing copies is a good way to store important documents as well). You should never force someone to sign a waiver but explain that it is a condition of participating that they agree to sign the waiver.

Arc has some template waivers and terms & conditions that you can use for your event. Please contact the Arc Clubs team with some general details about your event (including location, whether people will be registering in advance and whether the event is free or paid).

Note: If any someone is under 18, waivers must be signed by their parent/guardian in order to be legally binding.

Copyright

General Copyright

Copyright protects literary works (articles, novels, screenplays, song lyrics); computer programs; artistic works (paintings, drawings, cartoons, photographs); musical works and sound recordings; films; broadcasts (TV and radio). If the Club didn't create it, chances are you need permission to use it.

Logos

Clubs should never use another organisation's logo without permission (including the UNSW logo). Companies take their brand very seriously and the Club could get in real trouble for using a registered Trade Mark without permission. If your Club has a sponsorship agreement with an external company, make sure to include mutual permissions and branding requirements (including how you want that company to promote your Club).

Never try to adapt another organisation's logo/trade mark for Club promotion. If the Club's design is too similar to an existing trademark, this could lead to breaches of the Copyright Act.

Movie screenings

In general, you need a license from the copyright owner to screen commercial movies in public. The fact that you have legally bought a DVD or video does not give you the right to screen it (and anywhere outside your home will be considered public), even if there is no charge to watch the film. This applies to both local and International movies as most productions will have an international distribution.

Please don't try to be clever by filming a movie on your iPhone; making copies of films for public screenings is also illegal.

You will need to contact a film supplier for permission. Roadshow Public Performance Licensing (PPL) (www.roadshowppl.com.au) holds the majority of licenses for movies in Australia and overseas.

Streaming TV shows

Most streaming services will be limited for private use. For example, if you have a subscription with Foxtel, you have already agreed not to screen any Foxtel content in a public area (unless of course

you have a business subscription). However, there is nothing stopping a group of people watching content together on individual broadcasting devices.

Using photos and images

Unless it is a photo you have taken yourself or is available from a free image website, you should get permission from the copyright owner. Contrary to popular opinion, just because it is on the internet, doesn't mean it is for public use. Using an image found online through a Google Image search can still violate copyright law.

Depending on where you found the image, you should get in touch with the content owner/website host and ask if you can use the image. Generally, if you give credit to the original source, it's OK but you need to check.

Income tax/GST

Clubs may have to pay income tax on proceeds that they receive from their fundraising activities. Income may come from selling items (food sales/merchandise) to the public or ticket sales (from non-members) for events, etc. This will depend on whether it is exempt from income tax. In general, Arc Clubs will be exempt as they would fall into one of the following categories:

- community service organisations
- cultural organisations
- sporting organisations

Non-profit organisations are required to make a self-assessment of income tax status. This should be done yearly via this form: www.ato.gov.au/Forms/Income-tax-status-review-worksheet-for-self-assessing-non-profit-organisations/

Being exempt from income tax means that your organisation will not be assessed on its receipts and it does not need to lodge an income tax return (unless specifically asked to).

Non-exempt Clubs must pay tax on any income over \$416 per year (up to \$915). A Club that generates income above \$915 per year is liable to pay tax on the entire amount of income.

Understanding tax can be tricky, so if your Club has a lot of income and expenditure, it may be worth engaging a professional accountant who can advise on your financial obligations.

Australian Business Number

What is an ABN?

The Australian Business Number is a unique 11-digit number that identifies your group to the government or community.

Do we need an ABN?

It is not compulsory for a not-for-profit organisation to have an ABN unless it has a goods and services tax (**GST**) turnover of \$150,000 or more (in which case it is required to register for GST and must have an ABN to do this). However, even if your organisation is not required to register for GST, it can be helpful to have an ABN.

An ABN does not create a separate legal entity. You can have an ABN while being an unincorporated association.

BUT

- If your Club provides services to other businesses without an ABN, they must withhold 46.5% tax from any payments made to the Club.
- You also need an ABN to register a website domain name that ends in .au
- Hiring or purchasing agreements may also require your Club to have an ABN.

ABNs are administered by the Australian Taxation Office (ATO) and registration is free.

Note: ABN is not the same as a TFN. You will still need a TFN to lodge a tax return.

It is also not the same as registering a business name (you first need an ABN to apply for a business name). An ABN is only necessary if the Club conducts any business transactions – it does not provide any legal protection or give an exclusive right to trade under the Club's name.

How do we apply for an ABN?

Apply here abr.gov.au/For-Business,-Super-funds---Charities/Applying-for-an-ABN/

Where can I find out more information?

Australian Competition & Consumer Commission – Contracts & Agreements

www.accc.gov.au/consumers/contracts-agreements

NSW Fair Trading – Consumer Contracts

<http://www.fairtrading.nsw.gov.au/ftw/Consumers/Contracts.page>

Office of the Australian Information Commissioner – Privacy Law

www.oaic.gov.au/privacy-law/rights-and-responsibilities

Sponsorship Guide for the Volunteer Sector

http://www.ofv.sa.gov.au/_data/assets/pdf_file/0018/8064/detailed-sponsorship-guide-for-community-groups.pdf

Not-For-Profit Law Information Hub – Guide to Fundraising (NSW)

www.nfplaw.org.au/sites/default/files/Guide_to_Fundraising_0_0_0.pdf

Australian Copyright Council

<http://www.copyright.org.au>

Australian Tax office – Do you have to pay income tax?

www.ato.gov.au/Non-profit/Your-organisation/Do-you-have-to-pay-income-tax-/Review-your-tax-status/

Australian Tax Office – How GST works

www.ato.gov.au/Business/GST/How-GST-works/

ABN Information: Australian Business Register ‘ABN Explained’

abr.gov.au/For-Business%2C-Super-funds---Charities/ABN-explained/

Related Documents

Clubs Handbook (www.arc.unsw.edu.au/clubs/clubshandbook)

Section 14 – Work Health and Safety (WHS)

Section 15 – Managing Risk

Section 17 – Insurance

Section 19 – Incorporation

Section 27 – Promoting your Club

Section 28 – Fundraising and Sponsorship