# INSURANCE ARRANGEMENTS GUIDELINES FOR SCHOOLS

## PUBLIC LIABILITY INSURANCE:

The Department, as an agency of the State Government, holds Public Liability insurance with total cover of $850 million for any one claim and in the annual aggregate for all claims.

This policy protects the Department against:

- claims for Personal Injury (including death) suffered by third parties – i.e. people who are not employees (employees are covered by WorkCover); and
- claims for loss, damage to or destruction of other people's property.

The Department and/or its employees must be legally liable for the policy to respond. e.g., if a student is injured at school and lodges a claim against the school, the student and/or their parents must establish that the school staff failed to take reasonable care to protect the student from an injury that was reasonably foreseeable.

The policy has a $5 million self-insured retention (SIR), with the cost of claims within that figure borne by the Department. These claims are managed by the Legal Division. All enquiries about a potential claim should be directed to Legal Division.

## INDEMNITIES FOR SCHOOL COUNCILS, MEMBERS AND VOLUNTEERS:

**School Councils**

A School Council is a body corporate constituted under section 2.3.2 of the Education and Training Reform Act 2006.

School Councils may be indemnified by the State of Victoria against liability for any negligence claims made against them. Indemnification for the cost of settlement and legal representation of such claims may be provided if, after taking account of the impact of payment upon the school's educational program and any insurance cover for the School Council, the Department is satisfied that the council acted in good faith and according to issued guidelines/directions and has insufficient funds to pay the claim

## SCHOOL COUNCIL MEMBERS:

School Council members are further protected by a legislative indemnity. This protects school council members against liability incurred by the School Council caused by any actions reasonably carried out by school council members in good faith during the course of their duties as school council members.

## VOLUNTEER SCHOOL WORKERS:

**Injury or Damage caused by Volunteers**

Volunteer school workers and volunteer student workers are protected by section 37 of the *Wrongs Act 1958* which effectively provides that the school council (and not the volunteer) is liable for anything done, or not done, in good faith by a volunteer while performing activities on behalf of the school.

**Injury Suffered by Volunteers**

Volunteer school workers and volunteer student workers are also covered as if they are employees if they are injured in the course of the volunteer work. See Part 5.6 of the *Education and Training Reform Act 2006*.

**Work for Centrelink Payments Volunteers**

A separate Personal Accident policy has been arranged for those persons undertaking voluntary work at schools as part of their Centrelink payment commitments.

**Damage to Volunteer's Property**
Volunteer school workers, including Centrelink volunteers and volunteer student workers may seek compensation from the Department for damage to their property sustained in the course of their volunteer work.

**USE OR HIRE OF NON-SCHOOL FACILITIES:**
Schools regularly use municipal or shire council facilities, shopping centres, local streets and other facilities to conduct educational programs, fund raising activities and functions for the benefit of students and the local school community. Schools are often required to produce evidence of Public Liability insurance cover for use of these facilities.

This evidence takes the form of a Public & Products Liability Certificate of Currency.

**School councils must not agree to indemnify other parties**
A School Council does not have authority to agree to indemnify a third party. Schools must not sign any document agreeing to indemnify other parties.

**The Department will not indemnify or insure other parties**
The Department's Public Liability policy will not, under any circumstances, be extended to cover the legal liability of other parties. The Department will not agree to endorse its Public Liability policy to provide other people or organisations with indemnity nor will it agree to insurance in joint names. School councils do not have the authority to enter into such arrangements.

It is recommended that organisations hiring out facilities to schools, such as local sporting ovals, civic centres and theatrettes have their own Public Liability insurance to cover their negligent acts that result in injury to persons using the property or damage to school equipment. Always ensure they have adequate Public Liability insurance before using their facilities.

Should an organisation insist on an indemnity or for the school's policy to include their name as a condition of hire, it should be clearly understood that the Department's insurance does not provide such cover. The only option available to the school in this situation is not to proceed with the hire of that facility or to purchase insurance cover in the joint names of the school and the hirer of the facility with a commercial insurer.

**RISK MANAGEMENT:**
Before making available the use or hire of school facilities, school councils should ensure that reasonable care will be exercised at all times to avoid or minimise the risk of injury or property damage from the use or hire of the facilities. Whilst insurance can cover financial loss, it does not cover such risks as reputational loss, which can also be harmful to the school. A good risk management program can minimise the chances of such events happening

**USE OF SCHOOL FACILITIES BY THIRD PARTIES:**
Schools regularly make their facilities available for use by third parties and this is encouraged by both the Victorian and Commonwealth governments. The activities that school premises can be used for falls into two categories:

- Activities for community benefit such as specific interest clubs, book reading societies or foreign language tuition, all of which are not-for-profit.
- Activities carried out for private use, such as birthday parties and barbeques and for-profit organisations.

The Department has removed the requirement for not-for-profit community groups engaged in low risk activities to provide evidence that they have $10 million Public Liability insurance when hiring school facilities. Groups whose activities pose a significant risk to school property, personnel, students or other members of the public, or for-profit organisations must provide proof that they have $10 million Public Liability insurance.

School Councils will continue to be covered through the Department's Public Liability insurance with the VMIA. However, insurance coverage is not extended to third parties hiring school facilities.

School Councils and principals should use their discretion in deciding whether to require low risk community groups to provide proof that they have their own Public Liability insurance.

Groups that will be required to provide evidence that they have $10 million Public Liability insurance include those:

- conducting high risk activities;
- required to have insurance by their association (e.g. incorporated sporting clubs);
- required to have insurance for regulatory purposes; or
- commercial entities.

Examples of high risk activities would include fireworks displays, bouncing castles, horse riding and fun fair activities involving machinery.

The same discretion should be used in allowing private use of school facilities. However if a for-profit organisation wishes to avail themselves of school property, evidence of current Public Liability insurance should be insisted upon.

**PUBLIC LIABILITY INSURANCE FOR SOLE CONTRACTORS:**

The Department arranges Public Liability insurance with the VMIA on behalf of certain contractors who have difficulty in obtaining insurance.

The insurance cover applies to the following contractors:

- School Cleaners that are sole traders or in partnership (**not companies)**;
- School Refuse and Garbage Disposal;
- General Basic Maintenance by the school handy person
- The contractors must have no employment other than the work they carry out at schools
- Those contractors that meet the criteria above are covered under the Department's policy
- If the contractors do not meet the above requirements, then they are not covered by the Department's Public Liability policy and need to supply evidence that they have obtained Public Liability insurance with a minimum policy limit of $10million, that the policy is current and placed with a reputable insurer
- The VMIA has placed very strict conditions in the insurance policy in this regard

**INDUSTRIAL SPECIAL RISKS (PROPERTY INSURANCE):**

**Department Insurance Arrangements**

The Industrial Special Risks policy protects the Department against the cost of loss, destruction or damage to property owned by the State of Victoria or the Minister. Examples of insured perils include fire, storm and tempest, explosion, water damage, earthquake, burglary, boiler explosion and flood. This policy has a limit of $3.05 billion for any one loss or series of losses arising out of one event, with the cost of claims under $3million being self-insured and borne by the Department.

**SCHOOLS:**

**Buildings Fixtures and Fittings**

The Department meets the cost of incidents in schools costing less than $3 million, effectively self-insuring most incidents. Facilities that are over entitlement (i.e. - locally funded or originally provided by the Department when the school had a larger student population) will not necessarily be reinstated by the Department. At the time of loss, an assessment will be made of the school's needs in line with the Department's asset management policies.

The Department will not provide schools with funding to replace contents that are not covered by its Reinstatement Fund or the School Equipment Coverage Scheme (SECS).

Fixtures and fittings that are a permanently fixed to the buildings are covered under the VMIA insurance policy. Depending on the amount of the loss and the type of fixture/fitting, the cost of incidents may be borne by the school or by the Department.

If a School Council wants any over entitlement facilities to be replaced when they are damaged or destroyed, they can obtain separate insurance cover for these facilities from the commercial insurance market. Any reputable insurance company or broker could assist in providing insurance cover and the cost of such insurance must be borne by the School Council. Facilities constructed under the Building Education Revolution (BER) program are covered under the Department's insurance arrangements - separate insurance is not required. If BER facilities result in other facilities becoming over-entitled,, the Department will work with individual schools to assess re-building requirements in accordance with the Reinstatement and Preventative Maintenance Procedures guidelines and policies.

**Electronic and Other Specified Equipment - School Equipment Coverage Scheme (SECS)**
The School Equipment Coverage Scheme (SECS) is a self-coverage scheme of the Department managed by the Infrastructure and Sustainability Division. This scheme covers specified contents in schools. Echelon Claims Services are contracted to administer these claims on behalf of the Department under the direction of the Infrastructure and Sustainability Division.

Most importantly, the SECS does not cover leased or hired equipment. Most lease or hire agreements require the lessee (the School Council) to take out insurance to cover replacement or repair of the hired equipment.

**Principal Controlled Contract Works Insurance (Construction Insurance)**
**Department Insurance Arrangements**
The Department has arranged a Principal Controlled Contract Works Insurance Policy with the VMIA. A Principal Controlled Contract is a contract for work that is arranged and controlled by the school, not the builder. The Policy covers

- Contract works up to $100,000,000 – loss or damage to property which is to be used in the course of construction during the construction period from various causes. This includes portable classrooms including fixtures, fittings and contents supplied by the principal whilst the works are in progress to a limit of $2,Million.; and
- Public Liability $300,000,000 – legal liability for personal injury and damage to other property arising from the construction works.

The Department, School Councils, the builder, the builder's sub-contractors together with construction and project managers are all covered by the policy. Construction plant and equipment is not covered by the policy.

The policy is subject to the following deductible which the builder is responsible for paying in the event of a claim:

- Section 1 Contract Works $10,000 each and every claim;
- Section 2 Public Liability

1) $50,000 in respect of worker to worker liability claims;
2) NIL for all other injury claims;
3) $10,000 in respect of any other claim – e.g. damage to another person's property.

**TRAVEL INSURANCE FOR TEACHERS AND STUDENTS:**
**Department Insurance Arrangements**
The Department has two Travel Insurance arrangements. Travel funded and undertaken on the business of the Department, that is arranged through Procurement, includes Business Travel Insurance with the VMIA.

The Department has also arranged a Travel Insurance facility with the VMIA to provide coverage to Schools that arrange Study Tours and the like for Students and accompanying Teachers, where the cost of the travel is borne by students and their families.

The cost per person for International travel is $40 inclusive of charges and the cost per person for Interstate travel is $1.80 inclusive of charges.

The policy generally provides broader cover than that available through commercial insurers and in most cases the actual benefits payable to travelers is significantly higher.

**School Council Expenses not covered by the Department**

School Councils face a number of potential liability claims that are not automatically insured by the Department. The potential liability claims relate to:

- Unlawful, unjust or unfair dismissal of school council employees, and discrimination claims. These claims are dealt with by Fair Work Australia, the Victorian Equal Opportunity and Human Rights commission and the Australian Human Rights commission.
- Breach of contract, breach of copyright law / patents / trademarks / designs;
- Land use objections;
- Defamation; and
- Criminal charges.

These matters are generally considered to be within the School Council's control, and are matters over which schools should adopt appropriate measures of supervision. Councils will generally be expected to meet any liability for these matters from their global budgets or locally raised funds. If a School Council is unable to meet its liability in these matters, the Department will consider whether to take over the claim and fund the legal costs and associated damages on a case by case basis, having regard to a set of criteria. If the School Council intends to approach the Department to request it to assume liability in the matter, the request should be forwarded to Legal Division with a full briefing on the matter.