

COVIDSafe Legal and Insurance FAQ

SHARING WHAT WE
KNOW

Purpose

To provide general guidance and responses to legal and insurance frequently asked questions in relation to the impact of COVID-19 on lifesaving Clubs, Club boards (also referred to as management committees) and Club members.

LSV's COVIDSafe Plan acknowledges that being COVIDSafe is everyone's shared responsibility and recognises that lifesavers are Victoria's first responders for preventing aquatic related death and injury. Without them, lives cannot be saved, and the public cannot be kept safe in Victoria's aquatic environments. Together with all our people, lifesavers are the foundation on which our mission can be achieved. Health, safety and security of our people are fundamental to the delivery of COVIDSafe Plans for LSV and Clubs.

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COVIDSafe for Saving Lives

FAQS | VERSION 1.0 | October 2020



Frequently Asked Questions

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1. General principles

1.1. What is the relationship between LSV and Clubs?

Together with LSV, each Club plays its own important part in our mission, to prevent aquatic related death and injury in all Victorian Communities. The relationship between LSV and Clubs is long established to achieve our mission and has been in place well before the COVID-19 pandemic.

This relationship has seen LSV and Clubs collectively set standards and deliver a breadth of activity including patrolling, training, sport, nippers, member development, community education and facilities development. LSV and Clubs have also collectively addressed a myriad of challenges including loss of members, injury, unlawful behaviour and many other issues that arise within community organisations.

From a legal perspective, all 57 LSV affiliated Clubs are 'separate legal entities' (i.e. individual 'incorporated associations'), with their own individual governing bodies (i.e. the Club board or management committee). LSV and Clubs come together through an annual affiliation process under the LSV Constitution, which sets out the principles that govern the relationship between LSV and Clubs.

As legal entities in their own right, both LSV and Clubs have obligations to take reasonable steps for avoiding harm related to COVID-19, to our members, volunteers, employees and the community. These steps are best taken together by LSV and Clubs, drawing on the long-established relationship, agreement and practices which have proved successful to date in operating the breadth of activity in lifesaving and collectively overcoming challenges faced by Clubs and LSV.

1.2. What are considered as reasonable steps for avoiding harm related to COVID-19?

Both LSV and Clubs have a role to play in diligently taking reasonable steps for avoiding harm related to COVID-19, to members, our volunteers, employees and the community. Outlined below is a summary of what LSV considers, at a minimum, are reasonable steps for LSV and Clubs. This is based on COVIDSafe advice from the Victorian Government and regulators current at the time this document was [last updated](#).

At a minimum, reasonable steps specific to LSV include:

- Keeping up to date with advice from the Victorian Government and regulators.
- Developing and maintaining the [LSV COVIDSafe Plan](#) with up-to-date recovery scenarios and roadmaps.
- Developing the [COVIDSafe Plan for Clubs](#) and supporting Clubs to implement this plan.
- Developing and updating resources to assist Clubs implement COVIDSafe plans.
- Conducting COVIDSafe training for COVIDSafe Coordinators and ongoing briefings for two-way situational updates.
- Supporting Clubs on a case by case basis in responding to questions in implementing their COVIDSafe Plan.
- Providing an industry recognised contract tracing system to register attendance with times, dates and health declarations.
- Providing ability for Clubs to request LSV to make site visit to help assess implementation of COVIDSafe plans.
- Maintaining all COVIDSafe related information on a dedicated webpage – www.lsv.com.au/clubcovidrecovery
- Communicating regularly with Club leaders to enable two-way situational updates.

At a minimum, reasonable steps specific to Clubs include:

- Diligently implementing the Club COVIDSafe Plan.
- Appointing COVIDSafe Coordinators and following training conducted by LSV.
- Implementing an industry recognised contract tracing system to register attendance with times, dates and health declarations.
- Identifying any specific risks at a Club from a COVIDSafe perspective and addressing these in coordination with LSV.
- Staying connected to LSV through briefings and asking any specific questions that relate to the Club.
- Communicating to members regarding COVIDSafe actions and monitoring compliance to the Club COVIDSafe Plan.

Club boards should review the steps above to check if they are considered reasonable steps from the Club’s perspective for avoiding harm related to COVID-19, to members, volunteers, employees and the community. Any gaps should be discussed with LSV and addressed by either the Club and/or LSV.

1.3. Why is there some uncertainty in the information that is provided in this FAQ document?

Whilst LSV and Clubs can assess what are considered ‘reasonable steps’, the ultimate assessment of what is reasonable can only be decided by a court of law in relation to prevailing circumstances. LSV is not able to provide definitive determinations on these matters.

This FAQ summarises general information current at the time this document was [last updated](#). While it has completed to the best of LSV’s knowledge, it may not cover every scenario or all questions for each Club. Any additional questions can be raised with LSV via clubsupport@lsv.com.au. If you require further information specific to your individual circumstances, you should seek your own legal advice or other professional advice.

2. For Clubs or Club boards

2.1. Do Clubs (and Club boards) have a duty of care towards Volunteers?

Yes. It has always been the case that Clubs (and Club boards) have a duty of care to its workers, both volunteers and employees. The Club (and Club board) has obligations to take [Reasonable Steps](#) for avoiding harm, which includes COVID-19.

2.2. If the Club’s board members are complying with director duties, can they be held personally liable for decisions by the Club board?

Unlikely. As has always been the case, members of a Club Board are subject to and must discharge their director duties at law. This includes acting in the best interest of the Club as a whole in furthering the Club’s purpose/mission and complying with any applicable laws.

These duties have not changed because of COVID-19.

2.3. Can a COVIDSafe Coordinator be held personally liable?

Unlikely, provided that they perform their duties (see [COVIDSafe Coordinator Position Description](#)) with diligence that a reasonable person might expect them to show in the role.

2.4. What should a Club do if a member refuses to follow the COVIDSafe Plan, or preventative measures?

The Club should immediately ask the member to remove themselves from the activity, address the breach, which may include a warning or disciplinary action dependant on the severity and document the actions taken.

2.5. Can a Club make a member continue to volunteer?

No. There is no obligation requiring a member to continue to volunteer for the Club.

2.6. If a member of the Club or the general public contracts COVID-19 at the Club or Club run activity, could the Club be held liable, or legally responsible?

Unlikely, as long as LSV and Clubs have taken [Reasonable Steps](#) for avoiding harm related to COVID-19.

2.7. Our Club (or Club board) would like to close the Club and cease all Club activity this year. Is this okay from LSV's perspective?

Yes. Such decisions should be made in consultation with the Club's own members and LSV. The Club should consider any risks to the long-term membership sustainability of the Club. The Club should also consider any local community expectations and obligations it may have to the local government or land manager.

From a lifesaving services perspective, if a Club chooses not to patrol their beach, LSV will work with the government to explore alternatives including potential closure of the beach or reallocation of resource from alternate lifesaving services (such as seeking assistance from neighbouring Clubs or provision of placement of paid lifeguard services).

2.8. Does the Club have to use a COVIDSafe Plan approved by LSV?

Yes. Clubs can use the Club COVIDSafe Plan developed and approved by LSV. LSV has also developed accompanying resources for implementing this Club COVIDSafe Plan. If a Club is using this Club COVIDSafe Plan, the Club needs to agree to comply as noted in the plan. LSV strongly recommends that all Clubs use this Club COVIDSafe Plan.

If a Club chooses to use an alternate COVIDSafe plan instead of the Club COVIDSafe Plan provided by LSV, the Club must submit this alternate plan for review and approval by LSV. This is for the purpose of assessing the completeness of the alternate COVIDSafe Plan in having taken reasonable steps for avoiding harm related to COVID-19, to members, volunteers, employees and the community.

2.9. Does the Club need to lodge the COVIDSafe Plan with the Victorian Government?

No. However, Clubs are likely to be required to provide the COVIDSafe Plan to the Department of Health and Human Services (DHHS) and/or WorkSafe Victoria if a confirmed positive case occurs at the Club. DHHS has noted that there will be random spot checks for COVIDSafe Plans.

3. For members

3.1. Can my Club (or Club board) make me undertake volunteer activities such as patrolling?

No. Refer to FAQ 2.5 above.

3.2. Are reasonable steps being taken to mitigate COVID-19 exposure risk to members?

Yes. LSV and Clubs are taking [Reasonable Steps](#) and following advice from the Victorian Government. In addition to specific measures for COVID-19, LSV and Clubs are modifying activities to keep safety and wellbeing at the forefront and adapt as we go. See the FAQ [Lifesaving in the COVID-19 year](#), LSV's [COVID-19 Recovery for Lifesaving Club](#) web page and the Club's COVIDSafe Plan for more details.

3.3. What should I do if I have to self-isolate due to COVID-19 exposure while attending or volunteering at my Club?

Refer the detailed advice from DHHS.

<https://www.dhhs.vic.gov.au/self-quarantine-coronavirus-covid-19>

3.4. Is any financial support available if I have to self-isolate due to COVID-19 exposure while attending or volunteering at my Club?

Yes. Refer the detailed advice from DHHS.

<https://www.dhhs.vic.gov.au/self-quarantine-coronavirus-covid-19#financial-support>

3.5. What insurance cover is available to me if I contract COVID-19 while volunteering at my Club or another Club?

As a result of [LSV's role in emergency services](#) (as outlined in the State Emergency Management Plan), members who are current for the 2020-21 season and volunteering for patrolling, lifesaving operations training, education delivery (Nippers), participating in and delivering active training (sport), management and coordination are considered as 'volunteer emergency workers' under the Emergency Management Act 1986.

As such, they are covered by the WorkCover Scheme when participating in volunteering activities described above. This cover is provided through Allianz as the insurer, through Emergency Management Victoria.

Claims can only be made by a member if COVID-19 was contracted during the course of volunteering as described above. A member contracting COVID-19 under any other circumstances cannot make a claim.

See [WorkCover Scheme for volunteer emergency workers](#) for details.

Note there is no cover for illness, which includes COVID-19, under the personal accident policy in the [SLSA National Insurance Program](#).

4. Support and Insurance

4.1. Who insures our Club?

The Surf Life Saving Australia (SLSA) National Insurance Program covers all Surf Lifesaving Entities (including Victorian Lifesaving Clubs). This cover includes insurance policies for:

- Public and Products Liability
- Crime
- Associations Liability
- Personal Accident
- Directors and Officers - Entities legal Expenses

Marsh is the insurance broker for the SLSA National Insurance Program. Details of the SLSA National Insurance Program can be found at <https://sport.marshadvantage.com.au/slsa>. There is also a SLSA National Insurance Program Policy Overview summary available in the Club Administration section of the [LSV website](#).

Note: The SLSA National Insurance Program policies, due to expire in October, have been extended to 1/11/2020. Upon renewal, the new policies will be backdated to commence from 07/10/2020. Marsh is currently negotiating with insurers for the new policies. The FAQ responses in this document are provided based on information current at the time this document was [last updated](#). This document will be updated if any exclusion/additions are made to the new policies.

Please contact the Club's insurer for any other policies taken directly by the Club.

4.2. Is anything expected to change in the SLSA National Insurance Program due to COVID-19?

Yes, the new public liability policy will have an exclusion for COVID-19, which previously was not there.

4.3. What does this change mean for Clubs?

Any claim against the Club, alleging an injury or illness related to COVID-19, will not be covered under the new public liability policy. However, this does not mean the Club is without support. The SLSA National Insurance Program provides a level of protection for Clubs that may be subject to a claim. Up to \$50,000 per claim may be made available to represent the Club's (and members') interests should a claim against the Club be made alleging negligence leading to COVID-19 infection.

Marsh (who is the broker for the SLSA National Insurance Program) is not aware of any liability claims currently lodged relating to spread or infection of COVID-19. They believe that the risk is minimal for any business or association that operates with COVIDSafe plans in place. For a liability claim to succeed, two factors need to be satisfied by the claimant – firstly, that the duty of care owed to people has been breached, and secondly, that the breach led to the illness. It is Marsh's opinion that compliance with COVIDSafe plans largely refutes any argument that the Club has breached its duty of care to others.

If a Club is subject to a claim related to COVID-19 but cannot provide evidence of implementation and compliance with COVIDSafe plans, there may be no protection for the Club. Compliance with guidelines through COVIDSafe Plans is paramount in firstly minimising the likelihood of a claim, but secondly ensuring that there is some protection for the Club in the event of a claim.

4.4. Is the Club insured for inability to satisfy contractual obligations due to COVID-19?

No. There is no insurance cover for breach of contract claims, so the early and continuous engagement of business partners is vital. In relation to other parties (not LSV), a potential exposure for Clubs may be an inability to satisfy contractual requirements due to a reduction in capacity to deliver services or content to a third party. If this is a concern for your Club, LSV recommends early engagement with the contracted party to work through a solution to the issue.

4.5. Is a Club able to claim for any lost income due to COVID-19?

Unlikely. Marsh (who is the broker for the SLSA National Insurance Program) has received many enquiries as to whether the Industrial Special Risks (ISR) policy will cover the loss of revenue resulting from reduced operations due to COVID-19. In 2005-06 the global insurance industry introduced general exclusions for losses relating to quarantinable or infectious diseases as a result of stress testing on the financial sector for pandemic scenarios following the SARS virus. Therefore, the current policies generally exclude claims arising from quarantinable diseases, including COVID-19. This means that it is unlikely that any loss of revenue will be covered by your Club's business insurance or ISR policy. This is not a position unique to the SLSA National Insurance Program, it is a standard policy condition across all business insurance policies in Australia.

4.6. If we waive membership fees, are our members still covered by insurance?

Yes. Once a member joins, they are considered members of LSV and SLSA and therefore are covered by all applicable policies regardless whether a fee is charged. It is important that Clubs maintain accurate membership registers using SurfGuard to note clearly when a person becomes a member of the Club or renews their membership.

4.7. Will the Industrial Special Risks Insurance cover the Club assets while temporarily moved to a volunteer's/employee's home?

Yes. Cover is extended to all property when temporarily removed from business premises, however it would depend on the damage and how it occurred. The employees home insurance may also apply.

4.8. What is included in the WorkCover Scheme for volunteer emergency workers under WorkSafe Victoria?

The range of compensation to which a member may be entitled includes the following as outlined by [WorkSafe Victoria](#):

- [Weekly payments based pre-injury average weekly earnings](#)
- [Treatment expenses](#)
- [Permanent impairment benefit](#)
- [Receive superannuation contributions](#)
- [Entitlements following a work-related death](#)

4.9. How are WorkCover claims made?

A member claim covered under the Emergency Management Act, must initially be notified by emailing hr@lsv.com.au. Claims must include the following information and documentation for provision to the insurer:

- [Worker's Injury Claim Form](#)
- [Employer Injury Claim Report](#)
- Incident Report (all injuries should be reported through LIMSOC/LSVComms)
- Signed statement made by Club official
- [Certificate of capacity](#)
- Payslips (if claiming for loss of wages)
- Invoices for treatment
- Receipts for treatment

4.10. Have there been successful WorkCover claims in the past (pre-COVID-19) from members who were volunteering?

Yes. Members volunteering have had successful WorkCover claims for:

- Injuries sustained in active training and delivery education (aquatic sport and Nippers)
- Injuries sustained and loss of members in provision of lifesaving services

4.11. Are people employed or contracted by a Club covered under the Emergency Management Act for WorkCover?

No. Anyone who is employed or contracted by a Club is not considered as a volunteer emergency worker under the Emergency Management Act 1986. This is also the case for anyone employed or contracted by LSV.

For employees, Clubs must take their own work cover insurance, and contractors will generally be required to self-insure. LSV has taken WorkCover insurance for anyone employed by LSV. Further information is available on the [WorkSafe Victoria website](#).

Further information

Australian Charities and Not-For-Profit Commission (ACNC)

<https://www.acnc.gov.au/tools/guides/governance-good-acncs-guide-charity-board-members>

<https://www.acnc.gov.au/file/961/download?token=bJYM9xzd>

Justice Connect

<https://www.nfplaw.org.au/covid19>

[https://www.nfplaw.org.au/sites/default/files/media/Managing the return of volunteers to the workplace 3.pdf](https://www.nfplaw.org.au/sites/default/files/media/Managing%20the%20return%20of%20volunteers%20to%20the%20workplace%203.pdf)

Victoria State Government

<https://www.volunteer.vic.gov.au/covid19>

<https://www.dhhs.vic.gov.au/workplace-obligations-covid-19>

<https://www.dhhs.vic.gov.au/self-quarantine-coronavirus-covid-19>

<https://www.dhhs.vic.gov.au/self-quarantine-coronavirus-covid-19#financial-support>

Volunteering Victoria

<https://www.volunteeringvictoria.org.au/resources-guides/covid19/>

<https://www.volunteeringvictoria.org.au/wp-content/uploads/2020/08/FAQs-5-August-COVID-restrictions-Organisations-1-1-1.pdf>

Play by the Rules

<https://www.playbytherules.net.au/resources/articles/legal-liability-and-your-covid19-safety-officer>

WorkSafe Victoria

<https://www.worksafe.vic.gov.au/information-injured-workers-about-your-claim-and-covid-19>