4.13 **School fetes**

As most schools conduct school fetes there are issues concerning the safety of participants and the legal liability of the organisers that need to be addressed.

4.13.1 **Responsibility to conduct the fete**

Both the school council and a parents’ club or association (if established under Part 8 of the Education Regulations 2000 or Education and Training Reform Regulations 2007 Part 4 Division 2) have authority to raise funds for school purposes. Generally it is preferable that the school council rather than the parents’ club or association conduct the fete and enter into any contracts with commercial operators at the fete. There are several reasons for this.

Parents’ clubs are generally not legal entities. Unless they are a legal entity, they cannot enter contracts in their own right and technically contracts with commercial operators would have to be entered with the individual members of the committee. However, members of the parents club and its committee would be indemnified by the government against any legal liability as volunteers, provided that the activity was for the welfare of the school and was at the request of the principal or school council.

Entering into contracts by school councils has the following advantages:

- school councils are incorporated bodies with specific powers to enter into contracts
- school councils are specifically given the power to raise funds for school purposes by conducting local efforts or amusements by Regulation 43 of the Education Regulations 2000
- the *Education and Training Reform Act* 2006 provides a comprehensive statutory indemnity for members of councils. Section 2.3.32 states that the Crown must indemnify past and present members of school councils against liability for anything necessarily or reasonably done or omitted to be done by them in good faith:
  - in the exercise of a power or the performance of a function of a member; or
  - in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of a member.

4.13.2 **Volunteer school workers**

A ‘volunteer school worker’ means a person, who without payment or reward, voluntarily engages in school work. ‘

School work means:

- carrying out functions of the school council of any government school
- activities for the welfare of any government school, carried on by the council or any parents’ club or association or other body organised to promote the welfare of the school, at the request of the principal or council
- assisting in the work of any government school
- attending state or regional level meetings about government schools that are convened by any body receiving financial support from the government
• attending meetings about government schools in any region that are convened by
  the regional director or the Secretary to the Department of Education and Early
  Childhood Development.


6.16 Legal liability and associated matters and 6.38 Volunteer workers.

### 4.13.3 Legal liability of volunteer workers

Section 6.16.2.2 of the Victorian Government Schools Reference Guide states that volunteer workers undertaking school work on behalf of, and with the approval of, the school council or principal are indemnified as to their personal liability in similar terms to teachers.

Part 6.16 of the Guide provides that except in the most exceptional circumstances, the Department will arrange the legal representation of any teacher sued for injuries allegedly caused by the teacher’s negligence. If the teacher is found to be negligent the Department will also pay the damages and costs awarded. Some examples of exceptional circumstances are:

- if the teacher was drunk
- if the behaviour was entirely unrelated to the employment
- if the behaviour could only be described as outrageous
- if the behaviour would implicate the teacher in a serious criminal offence.

This means volunteers who organise or participate in running school fetes in good faith are well protected against any legal action by others.

### 4.13.4 Compensation for personal injury suffered by a volunteer worker

Section 5.6.2 of the Education and Training Reform Act 2006 states that volunteer workers who suffer personal injury from:

- engaging in any school work
- travelling to or from a place where school work is to be or has been engaged in

shall be entitled to be paid compensation as if the volunteers were state employees and suffered injury in the course of their employment with the State.

### 4.13.5 Commercial operators

Fete organisers often permit commercial operators to bring equipment (or animals such as horses) onto school grounds and to provide an activity for a fee.

There should always be a written agreement with a commercial contractor setting out the terms upon which the school council will permit the operator to come onto the school premises and specifying the particular service to be provided. If it is important to the school that the operator sets up in a particular way, occupies a particular location or operates in a particular way, then this should be in writing. Details of the financial arrangements should also be in writing.

Agreements with commercial operators should contain the following standard indemnity and public liability insurance clauses (see 4.13.5.1 and 4.13.5.2):
4.13.5.1 Indemnity

The contractor hereby indemnifies the State of Victoria its employees, servants and agents and the school council and its employees, servants and agents against all claims, liability or expenses (including legal costs) relating to any injury to persons or any loss or damage to any property caused (or to the extent contributed) by any act or omission of the contractor or its employees, servants or agents, except to the extent that the loss is directly attributable to the negligence of the State of Victoria, the school council or their employees, servants or agents.

It is not necessary for the State of Victoria or school council to incur expense or make payment before enforcing a right of indemnity conferred by this contract.

4.13.5.2 Insurance

Unless exempted by the school council, the contractor shall take out insurance to provide it with at least $10,000,000 cover per event in respect of the services provided under this contract:

- against any liability arising from an injury to any person or destruction of property
- to cover its obligations under the above indemnity and upon request shall provide the client with proof of compliance with this clause.

4.13.6 School council insurance

When the school council is prepared to take out public liability insurance itself, it can exempt the operator from taking out the public liability insurance referred to above. This may be an option if some of the operators are very small or if a vital larger operator refuses to cooperate.

However, apart from the additional cost to the council, it is worth considering why any operator does not provide the required insurance cover as a matter of course. If the operator is finding it difficult or expensive to obtain adequate insurance, then so may the school. Moreover, the reason for the difficulty or expense may be because insurers consider the activity or the way it is managed to be high risk. If neither the operator nor the school council can obtain insurance for an activity, it should not proceed.

The Department’s Liability Management Branch can provide advice on the availability of insurance.

4.13.7 Amusement rides and equipment that are deemed acceptable

Section 4.4.6.6 of the Victorian Government Schools Reference Guide notes that amusement structures and rides are regulated by legislation and sets out information that schools should obtain from the contractors. The legislation is administered by the Victorian WorkCover Authority. Further information may be obtained from Brian Cook, Group Team Leader, Field Operations, Victorian WorkCover Authority, telephone 9641 1555.

The school council and the principal have a responsibility to satisfy themselves that any amusements proposed to be provided by commercial operators and/or volunteers are safe and fit for the intended purpose. Obtaining an indemnity from the operator, and insurance, will ensure that neither the school council nor the state will be potentially liable for large payments for any injuries sustained. It will also ensure that if people are injured, there are funds available to provide compensation. However, it
will not prevent unnecessary pain and trauma. Only the care and vigilance of everybody involved can achieve this.

The commercial operator must have Public Liability Insurance in an amount no less than $10 million for any one event. The commercial operator should produce evidence from their insurer prior to the supply that reflects the insurance is current, that the insurance covers the ride or activity being supplied and note the Department of Education and Early Childhood Development.

4.13.8 Consumption of alcohol at school fetes

Please see 4.6.8 Alcohol and schools and seek advice from Consumer Affairs Victoria before undertaking any activities involving the consumption or sale of alcohol.

Resources

Contact

Community & Stakeholder Relations Branch

Coordination and Strategy Division

Department of Education and Early Childhood Development

Telephone: 9637 2442