

NATIONAL OFFICE

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To: All Affiliated Clubs and Member States

THIRD PARTY HIRE/USE OF YOUR CLUB - KA'S LIABILITY INSURANCE PROGRAM

The following information and accompanying Third-Party Hire Agreement is provided to Karting Australia Affiliated Clubs and Member States to assist you in ensuring that you have appropriate, (Third Party provided) liability insurance in place to adequately cover your Club if and when you hire or permit the use of your Clubs facilities (usually the Track and associated buildings) by a third party for Non-Karting Australia Sanctioned activities.

This could include but not be limited to cycling criteriums, motostars, postie bike races, recumbent vehicle races or activities, lawn mower races and kart race meetings that are organised by a group other than a Karting Australia approved sanctioning body and so on.

We provide this information to you as we are increasingly being made aware of some of the third-party usages that are occurring.

Let me be very clear – there is nothing preventing any Club from hiring their facilities to any individual or group that you choose to hire it to or allow to use it free of charge – it is your property (whether leased or owned).

Our sole motivation in writing to you and providing this information is to ensure that you are properly advised in relation to the insurance cover that a hirer should provide to you for the period that they are using your facilities.

Neither Karting Australia's Personal Accident Insurance nor our Public Liability Insurance and Professional Indemnity Insurance policies provide insurance cover for non-Karting Australia (including all member States) sanctioned karting activities.

It is for this reason that we strongly advise you to do two primary things:

1. Ensure that you enter into a legally enforceable agreement with a hirer that ensures that they will indemnify your Club, State Association and Karting Australia from and against all claims, demands, actions, costs and expenses arising out of or caused by the Hirer's use of the Club's facilities.
2. Ensure that the hirer has appropriate insurance in place to provide that indemnity and that your Club, State Association and Karting Australia are noted as preferably insured parties or at the very least interested parties on the Certificate of Currency that evidences their insurance policy to you.

Attached with this advice is a copy of the simple pro-forma Kart Track third Party Hire Agreement that Karting Victoria's solicitors prepared and that we have slightly modified for ease of completion and that ensures insurance cover is in place.

Following is a more detailed explanation for your information.

Links:

[Certificate of Currency – Liability Insurance](#)

[2023 KA Insurance Handbook](#)

[2023 KA Insurance Program Quick Guide](#)

KA's Insurance Program Coverage:

The Karting Australia National Insurance Program is designed to identify and address the specific risks associated with karting. It encompasses both Personal Accident Insurance and Public Liability Insurance. All Karting Australia karting activities are generally covered, including official races, official practice sessions and committee meetings.

The Insured Parties are:

"Australian Karting Association Ltd including Karting Australia (NSW) Inc; Karting (WA) Inc; Victorian Karting Association Inc; Australian Karting Association (SA) Inc; Karting Tas Inc; Australian Karting Association (NT) Inc; Australian Karting Association Qld Inc;

Together with and including:

All affiliated and associated clubs, their committees, sub-committees, members, trustees, license holders, officials, volunteers, employees, the CEO, employees and the Board of AKA Ltd."

Personal Accident Insurance

"Personal Accident Insurance covers karting drivers and other insured individuals (such as pit crew, marshals, officials and volunteers) for medical costs associated with accidental injuries that occur during Karting Australia sanctioned events and activities."

Public Liability Insurance and Professional Indemnity Insurance

"Public Liability protects Karting Australia and/or its insured individuals against legal and associated costs that may arise due to an allegation of negligence. Professional Indemnity is a sub-section of the Public Liability policy. Professional Indemnity covers Karting Australia and its nominated individuals against legal and associated costs that may arise in the case of an accusation of negligent acts, errors or omissions."

"Section 1 – Public and/or Products Liability

Legal Liability to third parties for Personal Injury and/or Property Damage occurring during the period of insurance and arising in connection with the Insured's business or products:

Section 2 – Professional Indemnity

Legal Liability for claims first made against the Insured and reported to the Insurers during the period of insurance arising from a breach of professional duty in the conduct of the Insured's business."

Scope of Events:

"Those activities as permitted or approved by Australian Karting Association Ltd, and any such additional events for which Australian Karting Association Ltd may elect to specifically notify to Underwriters, from time to time."

Third-Party Hire Agreement:

Affiliated Clubs that may wish to, from time-to-time hire or otherwise make their Club facilities including the Track and associated buildings and amenities available for the use of any other entity (a “**Third Party**”) are strongly advised to enter into a legally binding Third-Party Hire Agreement (the “**Third Party Hire Agreement**”) with such third party.

Karting Victoria’s lawyers have drafted a standard Third-Party Hire Agreement which the Victorian Clubs and several other Clubs in other States have used for some time. Karting Victoria has allowed KA to modify the agreement for the ease of completion and to provide clauses that have been drafted in conjunction with our insurers. It is attached at Appendix A.

With regards to insurance and indemnification of the Club, the Member State and Karting Australia, clauses 10 and 11 are relevant and have been approved by Gallagher (Karting Australia’s Insurance Broker).

Explanatory Notes

1. Hiring out a track to an unrelated Third-Party entity or for unrelated activities – karting or some other activity, is not insured under our insurance policies and the club will not have defence coverage should ANY claim occur from those activities unless the agreement for hire and/or the accompanying insurance policy provided by the Hirer makes provision of the Club, State Association and Karting Australia to be indemnified, insured or an interested party to their insurance.
2. An **Insured Party** is just that – insured. Generally, it signifies that they are a primary party to the policy and are therefore entitled to make a claim for cover.
 - a. Therefore, parties agreeing to 'name' a party as an insured should be certain that they wish to allow other parties to have the right to make a claim.
3. An **Interested Party** listed on a liability policy, is provided defence coverage if they are pulled into an action, only because of the negligence of the insured.
 - a. The policy will not defend an interested party, if that interested party is negligent.

Example – interested party coverage in Rugby League:

“This policy indemnifies the Interested Party in respect of any loss or damage arising from any claim that may be brought by any person against the Interested Party where such liability is directly resultant from the negligence of the Australian Rugby League, Queensland Rugby Football League Limited and its affiliated organisations. Provided that this policy does not extend to indemnify the Interested Party where the liability to pay compensation results from the Interested Party’s own negligence or the negligence of any servants, agents or subcontractors.”

4. Before the current Clauses 10 and 11 of the Third-Party Hire Agreement were modified in consultation with Gallagher they were as follows:
 - “5. The Hirer indemnifies the Club from and against all claims, demands, ~~actions~~, costs and expenses arising out of, in connection with or caused by the Hirer’s use of the Venue.
 6. The Hirer agrees to effect public liability insurance for an amount of not less than \$10 million per occurrence and to provide a Certificate of Currency to the Club at least three (3) weeks prior to commencement of the Hire Period.
 - a. The following entities must be noted as Interested Parties on the Certificate of Currency:
 - i. Australian Karting Association Ltd.; and
 - ii. <Name of State> Association Inc.; and
 - iii. The Club.
 - b. The Hirer agrees to keep the policy in force for the duration of the Hire Period.”

5. The New Clauses in the Hire Agreement are:

- “10. The Hirer indemnifies the Club, <Name of State> Association Inc and Australian Karting Association Ltd. from and against all claims, demands, actions, costs and expenses arising out of, in connection with or caused by the Hirer’s use of the Venue.
11. The Hirer agrees to effect public liability insurance for an amount of not less than \$10 million per occurrence and to provide a Certificate of Currency to the Club at least three (3) weeks prior to commencement of the Hire Period.
- a. The following entities should be noted as either Insured or Interested Parties on the Certificate of Currency:
- i. The Club
- ii. <Name of State> Association Inc.; and
- iii. Australian Karting Association Ltd.
- b. The Insured/Interested Party clause on the Certificate of Currency should be as follows:
- “The <Full Name of the Club>, <State> Karting Association Inc. and Australian Karting Association Ltd are noted as <insured/interested> parties in respect of any liability arising out of the Agreed Use of the Track located at <full address of the Track> by the insured and subject always to the terms contained in or endorsed on this Policy and the limit of indemnity provided by this policy.”
- c. The Hirer agrees to keep the public liability insurance policy in force for the duration of the Hire Period.”

So that the certificate of insurance provided by the hirer is covering the kart Club, they should be noted wherever possible that they are “INSURED PARTIES”. This way the kart club gets confirmation that they as an entity will be insured for any claimed negligence, under the hirer’s insurance policy.

Clause 10 says they will indemnify the kart club anyway, but the certificate will back that up if written as specified in Clause 11b of the Hire Agreement. It also ensures that the entity that will actually provide the indemnification of the club has the necessary financial substance to actually fulfill that obligation in the event that it may be required.

Summary

1. Clubs that hire their Circuit should sign a Third-Party Hire Agreement with the Hirer that covers the Hire.
2. It should contain Clause 10 at an absolute minimum and it is **preferable** that it also contains Clause 11 – Insured Parties.
3. Understanding that some hirer’s (e.g. a State Government Department) will not be in a position to note a small Club as an insured party, the Club can only ask though for this to be done.
 - a. If it returns as “Interested Party”, it’s better than nothing and at least they would have signed the agreement saying they’ll insure the club. That’s their fault if they don’t do it properly their end.
 - b. If it comes back as neither “Insured” or “Interested”, then the Club will need to either reject the proposal to hire the Club’s facility or rely fully on Clause 10 of the Third-Party Hire Agreement.

You are advised to adopt these simple and easily implemented best practices when hiring your Club’s facilities to a Third-party so that you effectively minimise any risk involved with their use of your Club, as the KA Insurance program does not provide cover for a Third-Party Hire.

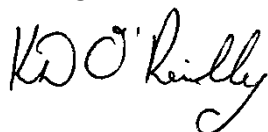
Steps To Follow

1. When your Club agrees to hire (or allow a Third-Party to use) any of your Clubs facilities, including your Track to a Third-party, you should agree on the terms of hire or use.

- a. The Third-Party Hire Agreement pro-forma will provide you with a practical guide on the things that should be agreed.
- b. The Hirer should agree to:
 - i. Indemnify the Club, the State Association and Karting Australia from and against all claims and actions arising out of, in connection with or caused by the Hirer's use of the Venue; and
 - ii. Note the Club, the State Association and Karting Australia as either "Insured Parties" (preferable) or "Interested Parties" on the liability insurance cover (Certificate of Currency) that they must have in place covering the activity; and
 - iii. Any of your Club's requirements.
2. Fill in all the requisite details on the pro-forma Third-Party Hire Agreement.
 - a. Provide a copy of it to your State Secretary/Administrator so that they can review it to make sure that the essential details of cover for the State Association and Karting Australia as in place.
 - b. Provide it to the Hirer for their review and signing.
 - c. You should always ensure that the person who is signing the Agreement has the power and authority of the Hirer to sign the agreement and once signed it will be a legally binding agreement with your club.
3. Ensure that the signed Agreement and the Certificate of Currency is returned to you well in advance of the date and time of hire and that the Certificate of Currency provides all the details of related to indemnity and insurance.

Finally, I would like to thank Karting Victoria for providing the base hire agreement that forms the basis of the Attached Third-Party Hire Agreement for your use.

Best Regards
Karting Australia

A handwritten signature in black ink, appearing to read 'K O'Reilly', with a stylized flourish at the end.

Kelvin O'Reilly
Chief Executive Officer