

Australian Karting Association Ltd

T/A Karting Australia
ABN 97 160 100 265



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HIRE/USE OF CLUB FACILITIES FOR NON-KARTING AUSTRALIA SANCTIONED ACTIVITY – INSURANCE PROGRAM GUIDANCE

To: All Affiliated Clubs and Member States

Date: 22 May 2024

OVERVIEW

Karting Australia (KA) has updated the advice for Affiliated Clubs and Member States regarding the hire of your Club facilities in an attempt to ensure that proper insurance coverage is in place when hiring to third parties for non-Karting Australia sanctioned activities.

KEY POINTS

1. Insurance Coverage Requirement:

- When your Club hires its facilities, such as the track and associated buildings, to a third party for non-Karting Australia activities, your Club will not have any insurance cover under the terms of Karting Australia's insurance policies as the facilities will be being used for non-Karting Australia sanctioned activities.
- On behalf of your Club, you should always ensure that the hirer provides adequate liability insurance coverage.

2. Decision to Hire:

- Clubs may choose to hire their facilities to any individual or group, for a fee or free of charge. However, consider the risks involved, especially for activities involving motorsport or racing or any other activity where there may be an obvious or hidden risk.
- If you have any doubts about hiring to a potential hirer, the simplest and most often the best decision is not to proceed with the hire – the risk is just not worth it.
- If you are asked to hire your facility to another Karting Australia Affiliated Club, you can be sure that you will be covered by the highest rated karting insurance in Australia throughout the hire period.

3. Potential Risks:

- If an injury (or worse) occurs during a third-party event, the injured party may seek to blame the Club and/or the State Association and/or karting Australia.
- Karting Australia's insurance does not cover non-sanctioned activities.

4. Hire Agreement:

- Use a legally binding Third-Party Hire Agreement, that your Club's lawyers have prepared for you, or the template Third-Party Hire Agreement (the "**Template Agreement**") attached.

5. Insurance and Indemnity Clauses:

- Clauses 10 and 11 in the Template Agreement are crucial and have been approved by our insurance broker.

STEPS TO FOLLOW

1. Agree on Terms:

- When hiring your facilities, agree on the terms of hire using the Third-Party Hire Agreement template.
- Document everything.
- If you are using the Template Agreement, use the full Agreement, not selected clauses from it. Only remove a Clause that is identified as a 'removable clause'.

2. Indemnity Agreement:

- The hirer must indemnify the Club, State Association, and Karting Australia against all claims arising from their use of the venue. **(Clause 10)**.

3. Insurance Requirement:

- The hirer must list the Club, State Association, and Karting Australia as "Insured Parties" or "Interested Parties" on their liability insurance cover. **(Clause 11)**
- It is preferable that the Club, State Association and Karting Australia all be listed as "Insured Parties, using their full legal names.
- If the hirer refuses to accept the 'Insurance requirement', as the hiring Club, you should question why they would refuse to accept these Insurance requirements**, then properly consider the exposure and risk that this poses to the Club, members of the Club Committee/Board, and/or the State Association, and/or Karting Australia.
- ** There could be some very good reasons why they cannot accept the Insurance requirements. Here are some or what we think would be valid examples:
 - The hirer may be a Government Department e.g. the Education Department as the insurer of the local State School that wishes to hire the facility.
 - A large Private School or private education body such as the Catholic Education Office.
 - A major corporation, or a university where the scale of their overall insurance portfolio is so significant that it just can't be done.

Note: Members of the Australian Motorsport Council e.g. Motorsport Australia, Motorcycling Australia and if their proposed activities suit the size, scale, and safety infrastructure of a Karting Australia Licenced Track, Karting Australia would be comfortable with the level and quality of insurance that they hold.

4. Documentation:

- Ensure all requisite details are filled in the Third-Party Hire Agreement and provide it to your State Secretary for review.
- If you are using the Template Agreement do not delete any Clause unless they are identified as a being a "removable Clause".
- The signed agreement and insurance Certificate of Currency should be returned well in advance of the hire date [at least one (1) month].

5. Authority Verification:

- Verify that the person signing the agreement for the hirer has the authority to do so.

EXPLANATORY NOTES

1. If you decide to hire all or part of your Club's facilities to a Third-Party for activities that your Club does not manage or control, your Club is not insured under KA's insurance policies for the entire period of the hire to the Third Party.
2. The club will not have defence coverage should ANY claim occur from those activities unless the Hire Agreement 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 listed as interested parties on their insurance.
3. 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.
 - This is the preferred option for all Clubs to follow when they are hiring their facilities to a Third-Party. 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.
 - 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.
4. 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.
 - 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."
5. **Clauses 10 and 11 in the Template 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 one(1) month prior to commencement of the Hire Period.
 - a. The following entities should be noted as Insured (*the preferred option*) 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."

Appendix A: About Karting Australia's Insurance Program Coverage

Karting Australia's Insurance Program includes:

- **Personal Accident Insurance:** Covers drivers and other insured individuals for medical costs due to accidental injuries during sanctioned events.
- **Public Liability Insurance:** Protects against legal costs from negligence claims.
- **Professional Indemnity Insurance:** Covers legal costs from claims of negligent acts, errors, or omissions.

Scope of Events:

- Covers activities approved by Australian Karting Association Ltd.

Full details of Karting Australia's Insurance Programs and the general Certificate Of Currency for our Public and Products Liability including Professional Indemnity Insurance can be found here: [Gallagher/KA Insurance Portal](#)

Best Regards,
Karting Australia



Kelvin O'Reilly
Chief Executive Officer