

Australian Karting Association Ltd

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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: 9 December 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. This correlates with the updated requirements of the annual Club Affiliation form.

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 used for non-Karting Australia sanctioned activities.
- On behalf of your Club, you should always ensure that the hirer provides adequate liability insurance coverage. Alternatively, you will need to obtain your own insurance at your own cost to cover liability in connection with the hiring of your Club's facilities.

2. Decision to Hire:

- Clubs may choose to hire their facilities to any individual or group, for a fee or free of charge. However, please consider the risks involved, especially for activities involving motorsport or racing or any other activity where there may be an inherent, 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. It is a condition of your Club's affiliation with Karting Australia that insurance be obtained covering all of the Club's activities. If adequate insurance coverage isn't in place, the liable entity (which could be the Club, State Association or Karting Australia) will be required to pay the amount owed to an injured person from their own assets.

4. **Hire Agreement:**

- Use a legally binding Third-Party Hire Agreement, that your Club's lawyers have prepared for you, or the standard Template Third-Party Hire Agreement (the "**Template Agreement**") attached.
- Should you elect to use a Third-Party Hire Agreement other than the Template Agreement, the terms of the agreement should comply with the Affiliation Requirements and otherwise be substantially similar in effect to those set out in the Template Agreement.

5. **Insurance and Indemnity Clauses:**

- Clauses 12, 13, 14 and 15 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 Standard 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 12**)

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 15**)
- 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.
- 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 12, 13, 14 and 15 in the Template Agreement are:**
 12. "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 (including legal costs on a solicitor and own client basis) arising out of, in connection with or caused by the Hirer's use of the Venue."
 13. The Hirer agrees to effect public liability insurance with a reputable insurance company for an amount of not less than \$20 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.
 14. Any insurance obtained in accordance with clause 13 must:
 - a. be with a reputable insurance company;
 - b. not have any exclusions, endorsements or variations without the Club's consent;
 - c. be for an amount, cover the risks and contain terms that are acceptable to or required by the Club, acting reasonably, from time to time.
 15. For the insurance required under this clause, the Hirer must:
 - a. pay the premium for the policy on time;
 - b. not vary or cancel the policy without the Club's prior consent;
 - c. renew immediately any lapsed policy;
 - d. not knowingly or otherwise allow any circumstance to arise that might result in the policy being voided or prejudiced;
 - e. rectify immediately any situation when the policy has been voided or prejudiced; and

- f. notify the Club of the cancellation of a policy or any circumstance that may affect a policy or a claim or lead to a claim as soon as reasonably practicable after the Hirer becomes aware of it.
- g. include the following entities as either 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.
- h. include an Insured/Interested Party clause on the Certificate of Currency 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.”
- i. 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.

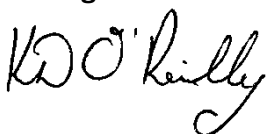
Scope of Events:

- 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