

GUNNEDAH CYCLING AND TRIATHLON CLUB INC

INSURANCE AND PUBLIC LIABILITY – FREQUENTLY ASKED QUESTIONS

1. I am a member of GCTC and wonder if I am covered if I have a cycling accident which causes me serious injury?

Answer – No and Maybe

No – The Club does not have indemnity insurance in the nature of personal accident that would cover you. The cycling and triathlon sport is dangerous and you voluntarily assume the risk.

Your solution is to take out your own accident cover or cease training and competing with the Club.

First maybe - The executive of the Club is however mindful of your concerns so we have arranged to take out insurance under the NSW Sporting Injuries Insurance Scheme conducted by the NSW Government, however this scheme provides only very limited benefits. You will not receive compensation for out of pocket expenses, medical expenses, legal expenses, wage loss, time off work, ambulance fees etc. It is last resort insurance only covering serious permanent injury. For example if you received a serious injury, were hospitalised for six months but made a full recovery you would get nothing under the scheme. If, by way of example, you ended up with a broken leg resulting in the loss of use of the lower part of a leg there would be an entitlement under Table A of the scheme to a benefit of \$33,970.00, as at 1/7/2010. You must establish at least 50% of the Table A loss so that if you only lost half of the use of the lower part of a leg then the figure would reduce to an amount just under \$17,000.00. Death benefits are payable under the scheme however this is the nature of the limit and extent of the insurance that the Club is able to provide to you.

Second Maybe – Cycling Australia (“CA”) has obtained insurance which covers Public Liability, Professional Indemnity and gives financial members of CA temporary cover during the current insurance period expiring 30/11/10 for members, private promoters and accredited coaches in certain limited circumstances.

As at 1/7/2010, cover is mainly effective only for the duration of a specific event for example, an accredited Cycling NSW event such as the Sundowner, but does not cover training unless sanctioned, controlled and run by CA or affiliated club. Personal Accident cover whilst training is limited to non-Medicare medical expenses, eg. dental, physio.

If you are injured in a CA accredited event examples of the personal injury insurance cover are as follows:-

- (a) Capital Benefit up to \$50,000 (this relates to death, quadriplegia, loss of all limbs etc.)
- (b) Loss of both eyes \$50,000
- (c) Total loss of use of one limb \$17,500
- (d) Permanent total loss of use of fingers of either hand \$20,000 etc

- (e) Loss of income for personal accident whilst competing in an accredited event is limited to a maximum amount of \$26,000 and is the lesser of 75% nett income lost or \$500 per week. It is subject to an excess period of 14 days.
- (f) Some medical expenses are payable but in very limited circumstances – Medicare is expected to cover you, the Medicare gap is not paid however some limited cover is available for Private Hospital, dental, ambulance, physio, chiropractic or similar other medical services.

Go to www.wills.co.au/cycling for more details.

2. I am severely injured as a result of a Club Official not taking proper care for my safety or being negligent in organising or conducting a race or practice session. Can I take proceedings against (A) the Club Official and (B) the Club?

Answer - Yes you can but don't bother!

(A) In relation to the Club Official:- Part 9 of the Civil Liability Act 2002, protects persons in the position of volunteers (Sec 60). Club officials are included in the definition of persons working for sporting purposes and the definition includes volunteers. The Act specifically provides that a person in these circumstances does not incur any personal liability when participating in an event on behalf of the Club. As with many other legal matters there is an exception to this rule, that is, if the person caused you injury whilst intoxicated or acting outside the scope of the activities of the Club, or contrary to Club instructions there maybe an action. In normal circumstances there is therefore statutory protection against claims against voluntary club officers, workers, staff volunteers, flag marshals and persons generally assisting a club in triathlon and cycling events.

(B) Can I take proceedings against the Club?

Answer – Yes you can, but don't bother. If the Club is proven to be liable by virtue of negligence of its officers, servants or agents and that negligence is the cause of you suffering injury then you may have an action. If your problem is caused by a protected volunteer or honorary official, no action.

There are some further hurdles as against the Club: –

1. You must establish that the Club failed to take precautions against a foreseeable risk, and
2. That the risk was not insignificant, and
3. That a reasonable person would have taken those precautions (Division (2) Civil Liability Act).
4. You are also presumed to be aware of an obvious risk (Division 4 of the Act).

5. Division 5 of the Act specifies that recreational activities, sports pursuits or any activity at beach, park or any other open public space does not give rise to a duty of care and in those circumstances the Club is not liable for an obvious risk.
6. If you have signed off on the Clubs waiver and indemnity which previously depended upon what was called Common Law rules, this now has statutory force and will probably exclude liability by the Club.
7. In addition the Club is not liable if you were warned of the risk involved in the sport. You are hereby warned that triathlon is a risky and dangerous sport.

Both the Club and its officers and members therefore have multiple protections against claims, the solution is to take out your own personal accident policy. Do not rely on having an action against the Club.

8. Additionally there is a threshold for the claiming of what is called Non-Economic Loss Damages, that is, to establish a right to claim for pain and suffering you must be seriously injured to the extent of at least 15% of a most extreme case.

Should you overcome all of the above hurdles, please bear in mind that the Club is uninsured other than under the Sporting Injuries Compensation Scheme or the CA Scheme previously referred to, has very little in the way of liquid assets and the likelihood is that not only would the Club be unable to cover any judgment against it, but would probably have insufficient funds to cover your costs.

3. **I am not concerned about myself, however I am concerned if my child receives a serious injury. Why don't I have a cause of action against Club officers and members on behalf of my innocent child?**

Answer – You are at liberty to self insure and take out any appropriate accident insurance on behalf of your child and other than the Sporting Injuries Compensation Scheme / CA Scheme your child does not have any greater rights than you do.

Your child, for legal purposes is classed as an incapable person and as long as your child was accompanied by you and you signed off on the Clubs usual indemnity and heard the risk warning, (and ideally read these FAQ'S) then the Club does not owe any additional legal duty under Division 5 of the Civil Liability Act to your child.

4. **My family members sometimes help out with Club activities or are a part of the crowd watching the cycle racing. If for example the barbeque gas bottle was not properly connected and blew up, or a cyclist left the track and ploughed into the crowd, injuring my family members, am I able to make a claim against the Club?**

Answer – Yes, but probably pointless. Injured persons in each of these positions can institute proceedings against the Club, however if the Civil Liability Act hurdles are overcome I make it clear that the Club does not have, and cannot afford full Public Liability insurance (other than the CA Scheme covering an accredited event) to cover all these circumstances and in the event that your

family members were injured and instituted proceedings the Club would have insufficient assets to fund any judgment, or costs.

There is however a possibility of claiming against CNSW or CA if their negligence caused injury, subject to the above hurdles.

5. I am competing in a cycle race when another cyclist loses control and causes me to crash, can I sue that cyclist and the Club?

Answer – You can institute proceedings, but again, unless the other cyclist intentionally caused your crash, or was racing whilst intoxicated or acted completely outside the rules of the sport, he may have a defence as per answer 2 (A) – See 2 (B) in relation to the Club. Otherwise the cyclist would have defences to your action under Division 2, 4 and 5 of the Civil Liability Act and the risks of suing an un-insured person are that even if successful your judgment may remain unsatisfied. If unsuccessful the costs could bankrupt you. The solution, either take out your own insurance or don't compete.

6. I am injured by a negligent member of the public striking me with their motor vehicle whilst I am running/cycling in a Club event. What can I do?

Answer – At last, a little bit of light at the end of the tunnel, you do of course have you rights under the Sporting Injuries Compensation Act / CA Policy, but more significantly you would be entitled to take proceedings under the Motor Accidents Act against the negligent driver. This is what Green Slip Insurance is all about, however it is not “free for all” although you will, if able to establish negligence, be able to recover a proportion of wage loss, most of your medical expenses, but you will only be able to claim general damages for pain and suffering if you end up with what is called “10% whole person impairment” or more.

7. My child or myself are injured during a Club activity and the Club calls an ambulance which makes a trip to casualty with myself or my child. Who is responsible for the ambulance costs?

Good question. An ambulance trip from anywhere around the outskirts of Gunnedah to casualty can generate a bill from the Ambulance Service of NSW of \$500-\$600 or more. The Club is not responsible for this cost, it is user pays. If you have a health care card, as I understand it, you may very well be covered, however otherwise if you do not have hospital cover or ambulance cover you will end up wearing the cost yourself. It is vitally important to ensure that you either have hospital cover, ambulance cover or are in a position to fund an ambulance trip before competing or training. You may be able to recover ambulance fees if you were competing in an CA accredited event under the CA policy however.

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STEWART MICHEL – GCTC

PS – I welcome feedback if you wish to debate any of the above suggestions – if I have not fairly represented the legal position do not hesitate to let me know. Otherwise, take on board the following:-

DISCLAIMER

This FAQ sheet is prepared for general information purposes only, it is not legal advice nor is it intended to be legal advice. Should you require specific advice as to any of the circumstances described, you should obtain independent and detailed advice tailored to your circumstances. No responsibility is taken for any reliance upon this FAQ or any inaccuracies contained in it and no retainer between you and I is hereby created.