

MANAGING CONTRACTS

With Outside Service Providers



The Issue

When schools engage out-sourced service providers (“suppliers”) for activities such as school camps and sporting facilities, they will ask the school to sign an agreement. These agreements may contain clauses that ask schools to be legally responsible for the suppliers’ negligence or failure to adhere to expected standards.

This is commonly referred to as an “indemnity”. As the school has no control over how the supplier conducts its activities or premises, the school should not agree to be responsible for the activities of the Supplier.

Agreeing to these types of clauses may have a negative impact on your insurance cover . Some insurance policies contain a provision that have the effect of limiting or excluding the insurer’s liability if a school has entered into an agreement whereby the school assumes liability for events or release suppliers from liability (hold harmless agreements).

The Solution

Before engaging a supplier, the school must check, or ask your lawyers to check, if any proposed contract requires the school to “indemnify” the supplier for the supplier’s negligence.

If it does, speak to your lawyers who can advise on the nature of the clause ie; does it mean that you take all responsibility or responsibility for your own negligence or some variation of risk transfer and changes to the agreement that ensure you are not liable for the actions and negligence of the suppliers.

The school must also ensure the supplier provides current Certificates of Placement/Currency as proof that appropriate covers have been arranged (e.g. Public Liability, Workers Compensation etc.) to protect the interests of the school.

MANAGING CONTRACTS (continued)

It is not uncommon for suppliers to attempt to protect themselves through the use of indemnity clauses in contractual agreements.

Tips to take action

As a minimum the following should be considered:

1. You should have a written policy on the extent of risk you are willing to take on including designated staff with the authority to sign contracts.
2. All contracts should be thoroughly read to determine if an indemnity clause, contractual transfer, or hold harmless clause exists in any form.
3. Speak to your lawyers before you sign any contracts that include an indemnity, waiver or release.
4. Keep copies of all agreements in a contracts log

WillisEd provides Customised insurance and Risk Management solutions to Independent schools.

Contact us

Should you wish to discuss this service further please do not hesitate to contact George Andreetta, Wes Bailey, or the Willis Ed representative in your state.



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