

LEGAL RESPONSIBILITIES TO MEMBERS AND THE GENERAL PUBLIC

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Introduction

I'd like to begin by explaining that I have been a solicitor in private practice for seven years. I have also been fortunate enough to visit the Australian Electric Transport Museum at St. Kilda on a number of occasions.

What are the legal responsibilities of tramway museums? Tramway museums must obey the law in the same way as individuals do. They are legally responsible for "negligence" (carelessness), the same as any member of the public. In fact, as an operating museum, the potential for serious harm is always high. Because of this potential, museums must take out appropriate forms of insurance cover against possible negligence. Such "negligence" insurance should cover three main areas:

- The Public
- The Members
- Paid Employees

I will briefly explain the types of insurance cover required to ensure adequate protection against "negligence" for these three areas.

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The Public

A Public Liability Policy covers the activities of both members and the public whilst engaged in activities at the museum. Such a policy passes on the responsibility for negligence to the Insurance company. The museum is not liable for accidents caused as the result of negligence of the injured person or member.

Most claims result from minor accidents, eg. a fall by an elderly person over oil or tools negligently (carelessly) left lying about. In legal claims for damages, the judge considers where the responsibility for negligence lies - with the museum or with the public. Any possible injuries from fund raising activities on site are almost certainly covered by a public liability policy.

At policy renewal time, it is suggested that museums shop around to obtain the best quote. This is desirable because of the increasing costs of Public Liability premiums. Check that the policy covers all your activities. Ask your insurer to explain the cover provided.

Incidentally, an accident caused by an "Act of God" such as an earthquake is not covered by a Public Liability Policy. You'll need a separate special policy.

The Members

As previously described, members are generally covered for accident damage resulting from the negligence of the museum by the Public Liability policy. However, a Public Liability policy does not cover members against injury resulting from personal negligence - and even the most careful member may be inadvertently injured through personal carelessness.

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The Members (Cont'd)

Individuals must usually rely on their own personal accident and sickness policy in such cases. Museums may wish to consider a special "accident" policy to insure members injured as a result of their own carelessness.

Paid Employees

Museums are required by law to have Workers' Compensation Insurance for any paid employee, even someone employed on a short term or occasional basis. For example, where a person is paid to mow lawns, or prune trees, an employee - employer relationship is deemed to exist and therefore Workers Compensation Insurance must be paid. A Domestic Insurance Policy can be taken out to cover cleaners and gardeners if required.

Summary

To sum up, Tramway Museums must obey the law in the same way as individuals do. They are legally responsible for "negligence" (carelessness) the same as any member of the public. The main areas of negligence protection concern:

- The Public
- The Members
- Paid Employees