



Federated Mountain Clubs of NZ (Inc)

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Liability Insurance Cover For Accidental Escape Of Fire

Clubs frequently ask FMC for information on liability for fire damage and whether insurance is necessary and available. The following general points can be made, but please note that every club's situation is different, and our advice is neither prescriptive nor a "fix-all solution". Also note that this memo is not a legal opinion.

Liability for costs arising from fire arises in 2 main ways:

1. Common Law

Anyone who negligently damages another's property is liable for the costs that arise. In the case of a tramper's campfire, stove or discarded cigarette setting vegetation alight, it would be difficult to argue that he had not been negligent. However in the case of a person falling, and an iceaxe hitting a rock and causing a spark, it could be argued that either the tramper had not been negligent, or that he could not have reasonably foreseen the outcome of his actions and thus could not have been expected to take precautions against such an outcome.

2. Statute

Section 43 of the Forest & Rural Fires Act provides for the person responsible for the outbreak of a fire to be levied the cost of suppressing the fire and the value of property damaged or destroyed, including consequential losses. In essence, this simply reinforces the common law position – you light the fire, you pay.

Sections 46 & 46A of the Forest & Rural Fires Act provide for property owners to be levied for the costs of fire fighting on their property and neighbouring properties if the fire-fighting could have prevented damage to their property. This liability only applies to landowners & occupiers adjacent to where a fire occurs, as it provides a mechanism to levy them for the costs of firefighting on the grounds that they benefit from efforts to save a neighbouring property, as without those efforts their own property would be at risk. This is clearly relevant to clubs that own huts or land.

Clearly it is desirable that individuals have access to insurance cover against risks such as these. The mechanisms available are:

1. Personal insurance

Home contents policies almost always provide cover for legal liability, usually for a six- or even seven-figure sum.. The advantage of personal cover is that it becomes irrelevant whether the member is engaged in club activities at the time of the fire. It would pay to check that the policy does cover Forest & Rural Fires Act liability.

2. Club Insurance

Many clubs already hold Public Liability policies. These will usually extend to indemnify their members individually, as well as the club, with the club having first claim if the cover is inadequate to cover the separate liabilities of the club and individual members. Clubs that own or rent property should already have such policies to cover eventualities other than rural fires. Clubs with huts and lodges should ensure that the policy provides cover under s46. It should be noted that for action to be taken against a club (as opposed to an individual) other than under s46, it would be necessary that the club as an organisation caused or contributed to the fire by its acts or omissions. This would appear to be a difficult to do, and such action is therefore unlikely.

The possibility of a group insurance scheme covering clubs has been raised on occasions but dismissed as not viable.

This paper was prepared by executive member David Barnes.