

SYDNEY ROCKCLIMBING CLUB INC.

CLUB TRIPS - QUESTIONS & ANSWERS

The information below will apply when the SRC starts running trips again.

This is a guide only and does not substitute for legal advice. If you have any queries, please contact your solicitor/legal adviser.

1. I am climbing on a club trip. All attendees are club members and therefore are adults and have signed waivers.

(a) What if I am injured and I caused the accident?

You can make a claim against the club's personal accident insurance policy. That policy is a no fault policy so the circumstances of the accident are not relevant. If your claim is successful you will receive payment as per the policy in place at the time of your accident. It is important to note however that the personal accident insurance policy provides for limited compensation. You can obtain a copy of the policy and details of compensation from the club secretary.

(b) I am injured and I believe another member is fault. Can I sue anyone?

You have two choices. You can make a claim against the club's personal accident insurance policy as detailed above. Alternatively you can sue the person you believe was responsible for the accident for negligence under the Civil Liability Act. In order to be successful you need to prove that the other member owed you a duty of care, that the other member was negligent and as a result of that negligence you have suffered loss and damage which exceeds the Civil Liability Act. The other person will instruct a solicitor/barrister to defend your claim and will rely on the waiver you signed as a defence to your claim to say you knew the risks and accepted those risks. If you are unsuccessful in your Civil Liability claim you will be ordered to pay the costs of the other member.

2. I go out climbing with a friend and we are both members of the SRC but the trip has not been advertised.

(a) I am injured. Can I make a claim against the club's personal accident injury insurance?

No. In order to claim under the club's personal accident injury insurance policy, your trip must be a club trip.

(b) I am injured and I believe my friend is at fault. Can I sue them?

If your trip is a private trip then you cannot rely on the club's personal accident insurance policy. You can seek to sue your friend under the Civil Liability Act if you satisfy the elements. Your friend would have to instruct a solicitor/barrister to defend your claim and could attempt to rely on the club waiver you signed as a defence. The Court hearing the case would decide whether the waiver showed you were aware of the risks and that applied to private trips.

3. I go out climbing with a friend who is not a member of the SRC.

(a) I am injured and I believe my friend is at fault. Can I sue them?

Yes. As set out in 2(b) above you need to satisfy the elements of the Civil Liability Act threshold. Your friend's solicitor/barrister could attempt to rely on the club waiver you signed as a defence. The Court hearing the case would decide whether the waiver showed you were aware of the risk and that applied to private trips.

(b) My friend is injured. Can I be sued?

Yes. The situation is the same as 3(a) above but with the roles reversed. As your friend has not signed any waiver their suit is likely to be successful provided they

can prove that you owed them a duty of care, were negligent and as a result of that negligence they suffered loss and damage which exceeds the Civil Liability Act's threshold.

4. I am climbing on a club trip and I dislodge a rock or drop a piece of equipment and as a result...

(a) Another club member is injured. Can I be sued?

The club member has 2 options which have been discussed above. Firstly they can claim against the club's personal accident insurance policy. Alternatively they can sue you and/or the leader under the Civil Liability Act. As set out above, the member would have to satisfy the elements of the Act and you would need to instruct a solicitor/barrister to defend you. The solicitor/barrister would rely on the club waiver signed by the club member as a defence to their action.

(b) A member of the public (non-member climber or passer by) is injured. Can I be sued?

Yes and the member of the public cannot make a claim on the club's personal accident insurance policy. Their claim would be against you and/or the leader under the Civil Liability Act. Again they have to prove the elements of the Civil Liability Act and you would have to engage a solicitor/barrister to defend the matter. Your solicitor/barrister would have to succeed in saying that a member of the public ought to have been aware of the activity and the dangers attached to the activity. It would be helpful if you had warned members of the public of the risks prior to the accident. If the Court awards in favour of the member of the public then you will be personally liable for any verdict awarded against you.

5. I am climbing but on a not on a club trip and I dislodge a rock or drop a piece of equipment and as a result...

(a) Another club member is injured. Can I be sued?

Yes. As the trip is not a club one the member cannot make a claim for personal accident against the club. The club member could sue you for negligence under the Civil Liability Act. He/she would have to prove the elements of the Civil Liability Act and you would have to instruct a solicitor/barrister to defend the matter. You could attempt to rely on the club waiver the club member signed as a defence but a Court could find that the club waiver only related to club activities. You would be liable for any verdict awarded against you.

(b) A member of the public (non-member climber or passer by) is injured. Can I be sued?

Yes, exactly as set out in 4(b) above. In other words the public liability is the same regardless of whether it is a club trip or not.

6. I am leading a club trip. A high number of people attend so we break up into small groups of 3-4 that go climbing in different areas of the one crag.

(a) One of the groups has an incident and a club member is injured. Am I liable?

If a claim is made on the club's personal accident insurance policy then there is no fault attached to you. However if the injured person decides to sue under the Civil Liability Act then proceedings may be commenced under the Civil Liability Act against you as leader and against the person who caused the accident. You would have to instruct a solicitor/barrister to defend the matter on the basis that you took all reasonable actions and were not the cause of the accident. The court would decide whether you are wholly/partially liable for the accident. In deciding that, the court would look at the circumstances of the accident and your role in it. Factors which could be considered include whether the size of the group made the accident more likely to happen, whether in splitting the group the ratio of inexperienced/experienced climbers changed and other factors. If you were found to

be wholly or partially liable then you would be liable for the verdict awarded against you.

(b) Unbeknownst to me, one of the groups runs into a non-member and invites them to climb with them. This non-member suffers an injury. Can I be sued?
The non-member cannot make a claim on the club's personal accident insurance policy as they are not a member. In respect to a claim under the Civil Liability Act, the non-member could sue you and/or the person who caused the accident. You would have to instruct a solicitor/barrister to defend the claim for you. Your solicitor would no doubt join the member who invited the non-member to the claim as a cross-defendant on the basis that it is your practice not to allow non-members to attend club trips and that you would usually be able to rely on the waiver as a defence. If the cross claim was successful the cross defendant would pay any verdict you were ordered to pay on your behalf.

7. I am on a club trip and I disobey a safety requirement of the club and a club member is injured. Am I protected by the waiver?

The club member could claim under the personal accident insurance policy or as an alternative sue you for negligence under the Civil Liability Act. As explained above the club member has to satisfy the elements of the Act. You would instruct a solicitor/barrister to defend the matter and your solicitor would rely on the waiver signed by the club member as a defence. The difficulty is that the waiver protects you when you have acted reasonably. If the Court hearing the matter forms the view that you did not act reasonably then the waiver is of very limited value and you are likely to have a verdict made against you.

8. A person on a club trip is injured. Can this person sue the club, and via this mechanism sue for the assets of individual members even though they were not involved on the trip?

A person can sue the club and as the club is incorporated only the assets of the club can be used towards any verdict. The assets of members are protected. However, as in incorporation law, if the committee (assuming they are the directors of the SRC which a court would likely consider they are) allows the club to continue to trade when it has no money then the committee itself can be liable.

9. I have just joined the club but have had several years of outdoor climbing experience. Can I run a trip?

You can run a trip if you have sufficient experience. However in the event of an accident the club and its members can rely on any misrepresentation you have made in respect to your experience.

10. I am a new member and have just started climbing. This rockclimbing bizzo seems pretty easy to me. Can I run a trip?

No, as you do not have sufficient experience. If you claim that you have experience which you do not have, then that misrepresentation can be relied on by any person/s injured during your trip.

Current proposed requirements for a trip leader:

- *6 months of regular outdoor rockclimbing experience*
- *Proficient in rockclimbing knots*
- *Proficient in setting and checking top rope anchors*
- *Current First Aid knowledge*
- *Ability to check the condition of the rope and equipment*