

## **If a parent is questioning the waiver on our enrolment form, should I insist that she signs?**

Many programmes include, on their enrolment form, a waiver clause. There are various wordings but it usually will say something like "staff will take all care... but will accept no responsibility..." It would be fair to say that many parents will sign off on these without giving them much thought and staff, in the same way, accept that they are a fairly standard part of the enrolment process.

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### **What is a waiver?**

*"I acknowledge in signing this form that neither the staff or management of ..... will be liable for any loss or damage to person or property ....."*

These types of clauses, sometimes also called disclaimers, are intended to release staff and the programme from liability for damage, loss or injury. They also act to alert people to the likelihood that some injury or loss could occur. Participants can then give "informed consent" that they wish to go ahead with the activity. For instance, I would probably not be allowed to take a bungee jump, or sky dive, without signing something to say that I am aware of the risk of injury or loss and still wish to do it.

Participants sign on the understanding that there are risks and agree to accept responsibility if something does go wrong. In the case of children, parents would be expected to sign on their behalf, which is what often happens when enrolling in an OSCAR service.

*"While management of ....., its employed and volunteer staff will take care to provide proper supervision of all children, neither the management nor the employed staff shall have any personal liability in respect of any act of omission out of any session or activity of the ..... Programme."*

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### **What legal protection does a waiver give my organisation?**

There are a range of opinions on the effectiveness of waivers but most commentators agree that there are limitations. On the Ministry of Education web site is the following: "A signed waiver does not release the organisation, individual staff, or any person from their legal responsibilities for the prevention of harm." (Ministry of Education, 2016)

Sport NZ has commented that: "If properly used, waivers... are an effective way to emphasise that an activity has potential risks and is not to be undertaken lightly... Note that courts will not always uphold waivers."

So in certain circumstances, waivers might help to limit potential liability but there is no guarantee that they will be upheld. By signing, people acknowledge that there may be risks associated with their child attending a programme. At the same time they expect that a suitable level of care and good practice will be consistently in place.

So what happens if there is then some kind of mishap at a programme? Most legal opinions agree that signing a waiver will not prevent a parent from taking a complaint or concern further.

If there was no injury or other loss (financial, damage to property etc.) the parent may simply wish for the situation to be investigated by an external body – the MSD Accreditation team or Worksafe (if there was a health and safety issue). Most often, in these circumstances, the outcome would be some recommendations for improving practices and preventing a similar mishap in the future.

If a child was injured, ACC will cover the costs of most injuries and ACC legislation would limit the parent from taking further legal action, except if the injury was caused by a very high level of carelessness.

Refer to our [FAQ on legal liability](#), for more information.

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### **What are my options if a parent has questions about signing a waiver?**

Many parents will not give a second thought to waiver clauses and will sign off on all kinds of wordings. If a parent does have concerns we would recommend the following steps

- Explain why you have the waiver clause and especially be clear that the programme and staff will act responsibly, follow proper procedures and carry out their duties diligently
  - Listen to the parent's concerns – is it particular activities that they are concerned about; is there more they can tell you about their child?
  - Offer options – perhaps the child could opt out of a particular activity if the parent has safety concerns.
  - Do not force the issue: if they do not want to sign the waiver, maybe this could be noted and the enrolment could proceed – but programme management would need to be on board with this.
  - Review your enrolment form: is your waiver clause necessary? Could it be re-worded?
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### **Wordings for an enrolment form**

In seeking consent from parents for activities, you should aim to:

- explain risks fully, so the participant understands them
- invite parents to ask questions about the proposed activity
- be clear that activities will be entered into voluntarily and what other options might be available if the participant opts out.

If you wish to have in place some form of waiver clause, the following clauses aim to provide risk disclosure and obtain informed parental consent, with an opt-out option made available.

*I have read and understood the information about the programme that I have been given and acknowledge that I have had the opportunity to ask questions and discuss any concerns. I will take this opportunity, if necessary, at any stage in the future.*

*I accept responsibility for being informed about programme activities (and will refer to activity information posted at the programme), as well as any notices issued by the programme. I understand that it may be possible (where the programme schedule allows) for my child to opt out of some programme activities, but on the whole it is the philosophy of the programme to encourage children to participate in the full range of activities on offer.*

*I give consent for my child to participate in the programme activities. I understand that there are risks associated with my child/ren participating and I accept that, to the extent permitted by law, the programme management and staff will not be liable for accidental injuries (and any associated losses) which can occur, especially when children are involved in active play. To minimise the risk of accidents, the programme has safety procedures, including rules and boundaries for children's behaviour, that will be consistently applied. These procedures are in accordance with the MSD Standards for OSCAR, under which this programme is accredited.*

*I agree that, while the programme will exercise all due care, the programme and staff will not be liable for accidental loss or damage to any personal property that a child has at the programme.*

*I understand that I must keep the programme fully informed about any changes to personal information provided on the enrolment form and I will provide complete information about any allergies and/or medical conditions that my child/ren has.*

Note: this example does not include other recommended clauses such as consent for excursions; the process to exclude children who are behaving unsafely etc.

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*Please note: this information has been provided in good faith to highlight some of the legal issues when a child is injured at your programme. We hope this information will be a useful guideline but OSCN is not qualified to provide legal advice. We strongly recommend that expert legal assistance be obtained to properly manage the risk of legal liability for your organisation.*