

Investigating and Managing Public Liability Incidents and Claims





Investigating and Managing Public Liability Incidents and Claims

Accidents happen, but when they occur on your property, it doesn't always mean that you are liable. There are processes, procedures, and actions that Members can adopt to ensure that Public Liability incidents and claims can be effectively managed, investigated and defended to minimise costs.

Not always will an incident develop into a claim. Sometimes, if the person is not badly injured, they will simply want to know that the hazard or defect has been rectified, so that no-one else is injured. In other cases, the person may wish to seek compensation for any out-of-pocket expenses and in other instances, the injured person may commence litigation. Sometimes, incidents do not immediately materialise into claims but have the potential to develop over the longer term as injuries manifest.

Sometimes an incident will occur that is witnessed only by a third party, these are often the most difficult incidents to manage as they require additional investigative steps.

This checklist addresses the following issues that Members should consider when investigating and managing an incident or claim:

- A notification is made by a third party
- A notification is made by the person who suffered the injury or loss
- How to investigate an incident
- How to document an incident and a claim
- How to manage the claim to conclusion
- Implementing a proactive infrastructure inspection program
- How to notify a defect and responses to a defect notification, including defect rectification

Public liability incidents and claims will mostly occur on infrastructure assets such as footpaths and roads or in buildings. A pro-active infrastructure and asset inspection program which is focussed on identifying defects and hazards is important, not only to keep visitors to your property safe but also to demonstrate that the institution discharged its duty of care by having a reasonable process in place to identify and rectify hazards.

This checklist is generic and may not be suitable for all applications relating to incidents and claims as the nature of individual incidents and claims may vary significantly. It is intended to provide a list of issues for institutions to consider and does not constitute advice regarding the management of incidents and claims. It is recommended that each institution using this checklist employ modifications to ensure that it is appropriate for use in the context of their individual requirements and situations.

Section 1 – An incident has been witnessed

Sometimes a third party will contact you to advise that they have witnessed an incident that occurred on the institution's property and resulted in personal injury or damage to third party property. Recording sufficient information at this point is important so that a formal investigation can be undertaken.

1.1	Have you recorded the name and contact details of the person notifying the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.2	If the injured person was transported to a hospital or medical centre, have you recorded those details?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.3	Have you recorded the name and contact details of the injured person?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.4	Have you contacted the injured person to enquire as to their well-being?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.5	Have you recorded the details of the incident, such as time, date, and location?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.6	Have you recorded the nature, cause and extent of the injury or damage?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.7	Have you recorded the name(s) and contact details of any other witnesses to the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.8	Have you advised the person notifying the incident that you will inspect the site?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.9	Have you prepared a detailed report that addresses all available details?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.10	Have you assigned a unique "incident number or identifier"?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
1.11	Have you admitted liability on behalf of the institution? (Never admit liability, as this may prejudice the institution's legal position and any discretionary protection arrangements)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A

Section 2 – An incident has been notified by the person involved or assistance was provided by Security or a staff member.

Sometimes the person who was injured will contact you to advise of an incident that occurred on the institution's property, that resulted in damage to their property. Recording sufficient information at this point is important so that any report will support the institution's defence of a claim and can be relied upon as evidence in court if required.

2.1	Have you recorded the name and contact details of the person involved in the incident and making the notification?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.2	Have you recorded the details of the incident, such as time, date, and exact location?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.3	Have you recorded the nature, cause and extent of the injury or damage?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.4	Have you recorded the name(s) and contact details of any other witnesses to the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.5	Have you enquired as to the well-being of the person involved in the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.6	Have you advised the person notifying the incident that you will investigate the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.7	Has the person indicated that they will be seeking compensation because of the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.8	If yes to 2.7 have you advised them that they must submit their claim in writing in order that you may formally consider it?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.9	Have you advised them that they must present evidence of their out-of-pocket expenses and any other expenses that they have or are likely to incur?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.10	Have you kept contemporaneous notes of the conversation in your diary or notebook?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
2.11	Have you admitted liability on behalf of the institution? (Never admit liability, as this may prejudice the institution's legal position and any discretionary protection arrangements)	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A

Section 3 - Inspecting and recording the site of the incident.

Collecting evidence of the hazard or defect is the most important step in the incident/claims management process, as it will largely determine if you owed the injured party a duty of care and whether you breached that duty. It is important to inspect and photograph the site prior to any corrective action being taken.

3.1	Have you identified the exact location of the incident?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.2	Did the incident occur on a formal footpath?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.3	Did the incident occur on an unformed footpath?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.4	Did the incident occur on a road reserve (nature strip)?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.5	Did the incident occur on parkland?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.6	Did the incident occur within a building?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.7	Did the incident occur on steps within a building?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.8	Did the incident occur on the steps at the entrance to a building?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.9	Is the hazard visible such as a raised section of footpath or a large hole?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.10	Is it a hidden hazard – such as a signpost which has been removed and the hole covered with grass?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.11	Where there maybe two defects which could be the incident site, have you taken photographs of both locations?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.12	Did the photographs include close ups identifying the hazard?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.13	Did you use a measure to identify the size of the hazard?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.14	Did you take a context photograph of the area surrounding the hazard?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.15	Were photographs taken at the same time of day that the incident occurred?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.16	Did you assess the lighting/shadow cast in the vicinity of the hazard?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.17	Are the photographs time and date stamped?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.18	Have you created a file within the institution's data management system to record details of the incident and investigation?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.19	Have you notified facilities maintenance of the hazard and its exact location?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
3.20	Has a warning or temporary protection measure been established?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A

Section 4 – Documenting the incident/claim and managing it to conclusion

Detailed documentation of all incidents/claims is critical to ensure that a contemporaneous record of the event is available in the future. Some claims take many years to develop. If it is determined that the organisation is (or may be) liable for the injury/damage, it is worthwhile engaging with the claimant to see whether the matter can be resolved for a modest sum. This assumes that the claimant is not legally represented. Where the claimant is legally represented, a more serious response is required, and this usually involves engaging a solicitor to investigate and defend the matter.

4.1	Have you allocated the incident an incident or claim number?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.2	Have you created an electronic or paper file for the claim?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.3	Have you placed all notifications, investigation documents, communications, contemporaneous notes on the file?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.4	Have you assessed the potential cost/settlement range of the claim?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.5	Have you notified Unimutual of the potential for a claim to develop?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.6	Have you determined the extent of the institution's liability – if any?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.7	Have you contacted the injured person regarding their recovery?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.8	Has the claimant sought compensation for their injuries?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.9	Have you made an ex-gratia payment offer to the claimant for out-of-pocket expenses?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.10	Has the claimant accepted the offer of an ex-gratia payment?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.11	If the answer to 4.10 is yes, have you prepared a deed of release, sent it to the claimant and received a signed deed of release from the claimant?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.12	If the answer to 4.10 is no, has the claimant engaged legal representation?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.13	If the claimant has engaged legal representation, have you received a statement of claim?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
4.14	If you have received a statement of claim, have you notified Unimutual or your broker?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A

Section 5 – Establishing an infrastructure and asset inspection program and defect intervention levels

An effective infrastructure and asset condition inspection and maintenance program will help reduce the likelihood of incidents occurring and claims developing. It is also a means of demonstrating that the institution took all reasonable steps to discharge its duty of care to visitors.

5.1	<p>Have you identified all classes of infrastructure and assets that are to be inspected? This may include:</p> <ul style="list-style-type: none"> • Paths and walkways • Informal paths • Roads and nature strips • Grassed areas and furniture <p>Building accessways (steps internal and external)</p>	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.2	Have you identified infrastructure usage rates and criticality for all classes of infrastructure and assets?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.3	Have you established an infrastructure and asset condition assessment and rating system?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.4	Have you established an asset inspection priority and frequency schedule based on usage rates and criticality?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.5	<p>Have you identified the type and nature of defects and hazards which inspections will target? These may include:</p> <ul style="list-style-type: none"> • Trip hazards – such as raised concrete • Unevenness - Damaged surfaces • Slippery surfaces • Poorly illuminated areas • Hidden hazards • BCA noncompliance 	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.6	Have you established a risk-based rating tool for the assessment and rating of defects and hazards?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.7	Have you established a defect severity scale for the different types of defects?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.8	Have you established a defect intervention and rectification response schedule that considers the severity of the hazard, the likelihood of personal injury and timeframes for rectification?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.9	Do you document hazards and defects (photograph) prior to rectifying them?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A
5.10	Have you established a hazard and defect reporting system that can be used by people other than asset inspectors?	<input type="radio"/> Yes	<input type="radio"/> No	<input type="radio"/> N/A

Links to infrastructure and asset condition inspection references

<https://www.darebin.vic.gov.au/~media/cityofdarebin/Files/YourCouncil/HowCouncilWorks/MeetingAgendasMinutes/CouncilMeetings/2009/29Jun/Item-51-Appendix-B-Darebin-Defect-and-Safety-Inspection-Manual-June-2009.ashx?la=en>

<http://www.balranald.nsw.gov.au/wp-content/uploads/2014/03/Footpath-Policy.pdf>

https://www.randwick.nsw.gov.au/data/assets/pdf_file/0020/22772/AssetManagement-Plan-footpaths.PDF

<https://www.ipwea.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=cfeb17fc-42bd-4c3d-9a30-b92f8108ffe6&forceDialog=0>

Notes

This document is provided for informational purposes only and contains general advice that is given without taking into account member's objectives, financial situation or needs.

Please consider the appropriateness of the information and any general advice provided in light of your objectives, financial situation or needs. Please read the Product Disclosure Statement (PDS) to reference the exact protection terms and conditions, and before acting on the advice offered, please seek separate professional legal or financial advice.

The content mentioned in this document is provided to support and does not constitute professional advice, and you accept and agree that following any information or recommendations provided herein is at your risk.