

## History Queensland - Management Liability (Office Bearers Liability)

### To what extent does being an Incorporated Not for Profit Organisation protect individual Office Bearers?

When your group is 'registered' as an incorporated group, it becomes recognised as a 'legal entity'. This means that the group has a legal 'identity' of its own, separate and distinct from the individuals who formed or make up the group, including the individual Office Bearers.

Because incorporation means that a group has a separate legal identity, an incorporated group can operate in its own name. For example, it can:

- sign documents and enter into contracts (leases or deeds of agreement)
- buy, sell, own, lease and rent property and other assets
- borrow money
- sue (take legal action in the courts) and be sued (taken to court), and
- enjoy perpetual succession (continue to exist even when membership of the group changes).

When a group enters into these arrangements, it is the incorporated group that is entering into the contract and the incorporated group that has rights and liabilities under the contract, not the people who make up the group (i.e. not the members or the committee members/office bearers).

#### Limited Liability

One of the main benefits of becoming an incorporated group and creating a separate legal identity from its individual members, is that the group then has a '*limited liability*' protection.

This means that in most cases, the responsibility for debts of the group or any legal costs the group may be ordered to pay, is limited to the amount of money and assets held by the group. This helps protect the people involved in the group from being personally liable if anything goes wrong with the group (that is, from being required to pay any debts or costs of the group from their own money or assets).

In practical terms, '*limited liability*' is a significant benefit - it effectively creates a 'corporate veil' that enables members to be protected from personal liability.

*An important exception to understand is that 'limited liability' will not apply to protect individuals if a director or officer of an incorporated group breaches their directors' duties.* These are duties prescribed by legislation and case law (judge-made law), and are largely the same whether you are a director of a company or an association. Some of these duties include:

- always acting in the best interests of the group
- being honest and careful in your dealings both with the group and on behalf of the group
- knowing what the group is doing, including how the group is faring financially
- ensuring that the group keeps proper financial records, and
- making sure that the group can pay all of its debts on time.

Breach of these duties may result in a "lifting of the corporate veil", which may result in relevant individuals being held liable for the breaches committed, this is particularly relevant if the loss/claim against the group is greater than the amount of money and assets held by the group.

Further information on governance and legal duties of office bearers can be found on the following Queensland Government website <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/associations-charities-and-non-for-profits/incorporated-associations>

### **How do I cover Office Bearers for Breach of Duties?**

The exposure to this kind of risk for History Queensland member groups is quite low. However if your group manages projects (or other obligations &/or funding) with or on behalf of Council, State or Federal Government or other third party organisations, and the project value/potential liability is greater than your group's assets (including money), then your Office Bearers do have an exposure should for example the project fail, due to poor management decisions/breach of office bearers duties and the third party suffers a financial loss as a result of the project failure.

This kind of exposure can be covered under the History Queensland's policy through Ansvar, by purchasing the extension for Management Liability (Officer Bearers & Entity Reimbursement) for a total annual cost of \$659.45 (including GST & Stamp Duty).

As previously stated, the exposure to this kind of risk for the activities of the majority of History Queensland member groups is quite low, but as an Office Bearer it would be prudent for your group to assess whether this insurance protection should be considered.

### **Management Liability - What is covered?**

**We** will provide cover under each **insuring clause** and applicable Automatic Extension that is shown on your certificate of insurance.

#### **Insuring Clause 2 – Directors & Officers (Office Bearers) Liability (\$1,000,000 Aggregate Limit of Liability)**

**We** will indemnify any **director** or **officer**, for liability incurred in their capacity as such a **director** or **officer**, for **loss** arising out of any **claim** by reason of any **wrongful act**, which **claim** is first made against them during the period of insurance and notified to us during either the period of insurance or the extended notification period and provided such director or officer is not indemnified by you.

#### **Insuring Clause 3 – Entity/Organisation Reimbursement (\$1,000,000 Aggregate Limit of Liability)**

**We** will indemnify **you** for any payment which **you** are required and are legally permitted to make to or on behalf of any **director** or **officer** for their liability for loss incurred in their capacity as such a **director** or **officer** and arising out of any **claim** by reason of any **wrongful act**, which **claim** is first made against them during the period of insurance and notified to us during either the period of insurance or the extended notification period.

### **Key Definitions**

**Claim** - means:

- a) any writ, summons, application cross claim, counter-claim or other legal or arbitral proceedings or process, or written demand seeking monetary or non-monetary relief and alleging any wrongful act;
- b) any written notice of any proceedings, investigation or inquiry which may give rise to the imposition of a penalty;
- c) any extradition proceeding against an insured person;
- d) any criminal proceeding.

Claim does not mean an action solely for declaratory or injunctive relief where there is no demand for compensation or damages.

**Insured Person** – means a director; or an officer; or an employee; or a trustee.

**Loss** - means compensation for which you and/or an insured person are legally liable and defence costs incurred by you or an insured person. *Excludes Insolvency/bankruptcy or liquidation of insured entity.*

**Officer** - means any natural person who was, is currently or becomes during the period of insurance an office bearer, a person who holds an executive or managerial office (as defined by the 2001 Corporations Act (Cth.)), a company secretary or a management committee member of yours or other person elected by you or by your governing body to represent your organisation in directing, managing or supervising your operations but does not include a trustee or a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, or person administering a compromise or scheme of arrangement of your organisation.

**Wrongful Act** - means any actual or alleged act, error or omission including but not limited to any unfair or unlawful act or omission, any misstatement, misleading statement, neglect, error, breach of trust, breach of duty or offence pursuant to an Act of Parliament or common law; provided such act or omission is relevantly committed or allegedly committed by a director and/or officer solely in their capacity as such a director or officer;

**You, Your, Yours** - means:

- a) the incorporated entity, entities or organisation(s) named as the insured in the certificate of insurance;
- b) each organisation that is a subsidiary organisation at the commencement date of the period of insurance and which was disclosed by you to us at the time of entering into this Section;
- c) any new subsidiary organisation formed or acquired by you during the period of insurance through consolidation, merger or purchase of its assets and in respect of which you assume control during the period of insurance provided:
  - i. such organisation is carrying on substantially the same business as yours;
  - ii. any acquisition or assumption of control increasing your total gross assets under management by more than 20% is reported to us within ninety (90) days after it is effected; and
  - iii. that this Section does not provide cover to the organisation which has become the subsidiary organisation or to any person who has consequently become a director or officer in respect of any wrongful act, employment practice breach, direct financial loss or crisis which occurred prior to the date of such formation or acquisition.