

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:

- open a bank account
- arrange insurance
- sign documents and enter into contracts
- buy, sell, own, lease and rent property and other assets
- borrow money, and
- sue (take legal action in the courts) and be sued (be taken to court)

If your group is incorporated, it can own goods and property in its own name. This makes it clear what property is owned by the group. If a group is not incorporated, there may be confusion about who owns:

- items bought for the group, and
- intellectual property developed by the group (including logos or website content)

Also, if your group is incorporated, it doesn't need to record changes to the group membership against its property. But, if a group isn't incorporated, it may need to transfer ownership from old members to new members. This transfer may involve paying a fee or taxes.

Once your group is incorporated, the separate legal entity continues to exist and be recognised by governments, the courts, businesses and the public, even when membership of the group changes. This is known as enjoying 'perpetual succession'.

Usually, the separate entity will exist until it is deregistered or 'wound up'.

Limited Liability

One of the main benefits of becoming an incorporated group, is that it has 'limited liability' and the entity protects the members from being personally liable for the entity's debts. If something goes wrong and your incorporated entity has to pay an amount that it cannot afford to pay, then (usually):

- the most your incorporated entity would have to pay is the amount of money and assets your entity owns, and
- the people involved in your incorporated entity will not have to pay any of the amount that your entity can't pay

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

However, the Not for Profit / Incorporated Association sector is not immune to claims against office bearers.

Please refer below

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.

There is an **important exception** to the limited liability rules.

If a director or officer of an incorporated group breaches their duties to the entity, they can be personally responsible for any loss that results from the breach.

These duties, known as **'directors' duties'**, are set by law. The law says that directors (and other officeholders) must:

- always act in good faith in the best interests of the entity and for a proper purpose
- exercise reasonable care, skill and diligence in carrying out their role. This includes making sure the entity can pay all of its debts on time and that it does not trade while insolvent
- manage conflicts between personal interests and the entity's interests, and
- never take advantage of their position or information they have gained in the role for personal advantage

If any directors or other officeholders breach their duties, they may be held responsible for their breach. In that situation, the individuals may have to pay any amounts owing because of the breach from their own pocket.

To stay update with responsibilities, changes in law, information on governance and legal duties of office bearers, please regularly refer to 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?

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

Quotations and coverage can be obtained direct through insurance brokers Gallagher or own insurance contact. Currently quotations for \$1 million Officers Liability coverage ranges between \$500 - \$600 on average, which includes a Professional Indemnity extension covering liability arising from errors &/or omissions from for example advice or communications.

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