



STEWARDSHIP & RISK

Directors' and Officers' Insurance: What It Covers and What It Doesn't

Incorporation does not protect directors personally. Insurance is not automatic either

A persistent and dangerous misconception circulates among association directors: that incorporation itself protects board members from personal liability. It does not. Incorporation creates a legal entity separate from its members, which limits liability in many circumstances, but it does not shield an individual director from personal exposure where negligence, breach of duty, or misconduct can be shown. Volunteer protection laws in each state and territory may protect unpaid office holders from some civil liability for good faith acts, but coverage and exceptions vary, so do not rely on them instead of insurance. Directors and officers insurance exists precisely to sit underneath that gap, and understanding what it covers, and what it deliberately does not, matters more than simply confirming a policy exists.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

In this resource

1. [The Three Layers Of Cover](#)
2. [The Legal Limit Insurance Cannot Work Around](#)
3. [The Right Product For Most Associations Isn't Standalone D&O](#)
4. [What To Actually Check In Your Policy](#)

The Three Layers Of Cover

D&O insurance is typically structured across three components. Side A protects an individual director's personal assets where the organisation is unable or unwilling to indemnify them directly. Side B reimburses the organisation itself for indemnity payments it has made to a director. Side C, less relevant to most associations, covers securities claims and is more commonly associated with publicly listed entities. For most associations, Sides A and B do the protective work, and confirming both are included, rather than assuming a policy automatically covers both, is worth a direct question to your broker.

The Legal Limit Insurance Cannot Work Around

For companies, the Corporations Act prohibits paying premiums for insurance against liability for a wilful breach of duty, or for improperly using position or information to gain an advantage or cause detriment to the company (section 199B), and separately limits the indemnities a company can give (section 199A). Incorporated associations should check their state or territory Act and their rules. This is not a policy design choice an insurer can offer around. It is a statutory boundary that applies regardless of how comprehensive the policy otherwise is. Honest, good-faith decisions that turn out badly, exactly the scenario the business judgment rule discussed earlier in this series is built to protect, sit within what insurance can cover. Deliberate misconduct never does.

D&O insurance exists to protect directors who made honest, reasonably informed decisions that did not work out. It was never designed to, and legally cannot, protect a director from the consequences of deliberately misusing their position.

The Right Product For Most Associations Isn't Standalone D&O

Standalone D&O insurance, common in the commercial sector, is often not the product that best fits an association's actual risk profile. Association Liability Insurance, a combined product purpose-built for not-for-profits, typically bundles Directors and Officers cover with Professional Indemnity, Employment Practices Liability, and often crime or fidelity cover, all within a single policy. Given that association boards face a broader mix of exposure than a typical commercial board, employment disputes, professional advice claims, volunteer management, alongside the standard governance liability risk, this combined structure often reflects the organisation's real risk profile more accurately than a narrower, standalone D&O policy would.

What To Actually Check In Your Policy

- Confirm insured persons are defined by role, current and former directors, committee members, office bearers, rather than by name alone, so the policy does not quietly exclude someone who joined the board after the policy was last renewed.
- Check for run-off cover, protecting directors for actions taken during their tenure even after they have left the board, since D&O claims can surface years after the relevant decision was made.
- Understand that most D&O policies operate on a claims-made basis, meaning the policy in place when a claim is made matters, not the policy in place when the underlying conduct occurred, which makes continuous, unbroken coverage important.
- Review standard exclusions carefully: fraud and dishonesty, known prior circumstances, and fines and penalties are commonly excluded, and in some jurisdictions, including NSW and Victoria, WHS fines cannot lawfully be insured at all, though a statutory liability extension can sometimes bring certain regulatory fines back into scope.
- Treat this as an annual review item connected to the risk appetite discipline discussed earlier this quarter, not a policy purchased once and forgotten as the organisation's risk profile changes.

Insurance does not replace good governance. Every discipline this series has argued for, documented decisions, conflict management, informed judgment under the business judgment rule, is what actually keeps a claim from arising in the first place. But for the director who has done everything right and still finds themselves facing a claim, confirming the policy covers what you assumed it did is not a formality. It is the last line of protection this series has been building toward all along.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

Founder and CEO, Nexus Leadership

BOARDROOM ACTION WORKSHEET

Directors' and Officers' Insurance: What It Covers and What It Doesn't

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

CONTINUE YOUR LEARNING

Turn governance principles into practical board action.

Self-paced courses, editable resources and practical support for association boards and CEOs at nexusleadership.com.au.