

UNINCORPORATED ASSOCIATIONS

Overview

Whilst rural fire brigades are established and receive their powers from the Queensland Fire and Emergency Services (QFES) Commissioner under the Fire and Emergency Services Act 1990, for financial purposes brigades are considered unincorporated associations. As such, rural fire brigades are unincorporated entities and do not have their own legal status. This means, that for financial purposes, brigades not subject to the Financial Accountability Act 2009.

It is important to understand that there several pieces of legislation which govern the business of QFES (including rural fire brigades) and the Financial Accountability Act 2009 is just one.

What is an unincorporated association?

An unincorporated association is one type of organisational structure. It is not a separate legal entity from its members. It is simply the group itself, made up of people who have agreed to come together to pursue a common purpose.

What are some challenges rural fire brigades face being unincorporated associations:

- The association cannot enter into contracts in its own name (the brigade name) because the organisation is not a separate legal entity.
- The association cannot hold assets in its own name, again because it is not a separate legal body.
- The association cannot own land, employ people, or sue or be sued.

In many cases, the members of the unincorporated association do these things on behalf of the association. In the case of rural fire brigades, some but not all of these issues are covered by QFES, for example; QFES owning property provided to or purchased for brigades.

Contracts:

In the case of large construction contracts (e.g. shed construction) the contracts should not be signed in the name of the brigade. If a brigade member

chooses to sign on behalf of the brigade, they need to understand the personal liability they are taking on. QFES is currently working on a process to support brigades entering into contract.

Holding assets:

In accordance with the Fire and Emergency Services Act 1990 section 84 (2):

“all equipment provided by, or the purchase of which is subsidised by, the chief executive is and remains the property of the State and may at any time be repossessed by the chief executive”.

Any asset, including appliances, support vehicles, and stations that are subsidised in any way by the Chief Executive are the property of the QFES and are recorded on QFES' Financial Register. This does not include brigade owned assets or equipment gifted to the brigade.

Own land, employ people, sue or be sued:

In the case of rural fire brigades all land is owned or leased by QFES on behalf of brigades.

As rural fire brigades are volunteer organisations they do not employ people.

As an unincorporated association, rural fire brigades cannot sue. Protection from personal liability is ordinarily covered in Section 129(1) of the Fire and Emergency Services Act 1990 and states:

“No matter or thing done or omitted to be done by any person pursuant to this Act or bona fide and without negligence for the purposes of this Act subjects that person to any liability .”

This means every volunteer is protected from personal liability while they are undertaking approved Rural Fire Service activities provided the action or activity undertaken by the volunteer is:

- a bona-fide brigade activity



- is in good faith, and
- without negligence.

Governance requirements

Unincorporated associations require a minimum standard of governance and for brigades this is provided by QFES through the provision of the Brigade Management Rules, QFES Procedures and Operations Doctrine.

Rural fire brigades are required to establish a Brigade Management Committee to oversee the management of all brigade activities.

The benefits to Rural Fire Brigades of being Unincorporated Associations:

While being an unincorporated association poses a number of challenges for rural fire brigades there are also a number of benefits. If a brigade were an incorporated association they would be subject to the regulation and compliance obligations associated with incorporation.

Incorporation, whether as an Incorporated Association, or as a company limited by guarantee, requires regular and ongoing compliance with governmental regulation. Some of the requirements of being an Incorporated Association include:

- Being prepared to forgo total privacy of the association's financial matters and accept that there will be public scrutiny of the association's activities.
- Being prepared to follow the regulations as set down by government. This may not provide the flexibility required.
- Most incorporated associations are required to have compulsory public liability insurance (this is currently provided by QFES, however if brigades were incorporated they would require their own public liability insurance, own Workers Compensation insurance and insurance for all brigade assets and equipment).
- Paying registration fees and annual fees to the government.
- Having a public register which includes the name and address of the contact person.

