

Chapter 15

Corporations

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Introduction

Corporations pervade virtually every aspect of modern life. From small family-run businesses, family trustee companies, not-for-profit organisations and charities to large multi-national corporate groups, the corporate form is ubiquitous. Perhaps less obviously, a myriad of federal and State statutory corporations carry out regulatory and quasi-government functions. Even solicitors, who traditionally have practised as sole-practitioners or in partnerships, can now form incorporated legal practices.

The modern corporation is formed automatically following a straightforward process of registration, which involves the lodging of an application for registration with the Australian Securities and Investments Commission and a decision by the Commission to register the company.¹ There are no restrictions on who may make such an application. What are now accepted as the key incidents of incorporation – namely, the existence of a separate legal personality and the limited liability of shareholders – immediately follow when registration is complete.² Those two fundamental concepts are related but distinct. A corporation has a separate legal personality in that the law recognises it as an artificial person, separate and distinct from the natural persons who own and control it, and permits it to sue and be sued in its own name. Limited liability is the principle that the owners of the corporation (that is, the shareholders)³ are not liable for the debts of the corporation beyond any amounts unpaid on their shares.

Although the oldest, and most fundamental, concept of incorporation has always been the creation of an artificial separate legal personality,⁴ the notion

1 *Corporations Act 2001* (Cth) ss 117-118.

2 *Corporations Act 2001* (Cth) s 119, which provides: “A company comes into existence as a body corporate at the beginning of the day on which it is registered”.

3 We ignore for present purposes other corporate forms, such as companies limited by guarantee.

4 The concept can be traced back to the Romans and Ancient Greeks: see Williston, “The History of the Law of Business Corporations before 1800”, *Select Essays in Anglo-American Legal History* (Little, Brown and Co, Boston, 1909), Vol III, 195, 196.

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