



# INCORPORATING A GROUP



# Introducing Landcare

Every weekend, everyday, volunteers are finding local solutions to local problems – pulling weeds, planting trees, improving the health of our soil, bushland, waterways and coastlines. The Landcare movement is about people with passion working together to make a difference.

Usually Landcare groups form when passionate locals share concerns about an environmental problem, then get together and do something about it. On-ground change is driven from the ground up and volunteers may be from the coast or the country, students or retirees, farmers or families. Groups can form to work on both private and public land, on the coast, in a catchment, in schools, on farms and in national parks.

Landcare is a grass roots movement, made up of many independent landowners and community volunteer groups including Landcare, Coastcare, Bushcare, Wildcare and 'Friends of' groups. While community care groups don't officially report to anyone, support may be provided by government, business and philanthropic trusts. A degree of 'officialness' e.g. incorporation and insurance is recommended to maximise these opportunities and to protect those involved in the group.

This resource outlines how to incorporate a group and includes:

## Contents

<b>Good Risk Management</b>	<b>3</b>
<b>What is Incorporation?</b>	<b>3</b>
<b>Why Incorporate?</b>	<b>3</b>
<b>Getting Incorporated</b>	<b>4</b>
<b>Model Rules: Your Constitution</b>	<b>4</b>
<b>Amendments and Disputes</b>	<b>6</b>
<b>The Public Officer</b>	<b>6</b>
<b>Annual Returns</b>	<b>6</b>
<b>Auditing</b>	<b>7</b>
<b>Exemption from Auditing</b>	<b>7</b>
<b>Landcare Tasmania Inc.</b>	<b>8</b>
<b>Other Support Available</b>	<b>8</b>

### Relevant Legislation

Associations Incorporation Act 1964  
Associations Incorporation Regulations 2007  
Associations Incorporation Direction 1999

### Information has been sourced from:

Consumer Affairs and Fair Trading  
GPO Box 1244  
Hobart TAS 7001  
p: (03) 6233 2225  
e: [business.affairs@justice.tas.gov.au](mailto:business.affairs@justice.tas.gov.au)  
[www.consumer.tas.gov.au/registrations](http://www.consumer.tas.gov.au/registrations)

Front cover image: Hobart City Council

*Disclaimer – This information should be viewed as a guide only. It is not intended as a substitute for legal advice, nor is it an exhaustive statement of the subject matter. The following information may be subject to changes related to legislation or administration processes. While all care has been taken in the preparation of this material, no responsibility is accepted by the author for any errors, omissions or inaccuracies. No responsibility can be accepted by Landcare Tasmania Inc. for any consequences that may result from reliance on information provided in this publication. Links to other websites have been included for your convenience. Landcare Tasmania Inc. does not accept responsibility for information or services on other websites.*

# Good Risk Management

Safety is paramount. Landcare groups are responsible for protecting members and participants, and for recognising and managing risks. It is essential that groups operate in a safe manner at all times as outlined in *Running Safe Activities* or by risk management guidelines provided by the land manager where you are working eg the Parks and Wildlife Service or the local council.

The aim of incorporation and insurance is to further minimise the risk to Landcare groups and their individual members of liability and legal action. Landcare Tasmania recommends that all Landcare groups have public liability and volunteer workers insurance cover. Some groups operate beneath an umbrella organisation (eg Wildcare Inc.). Others acquire their insurance and incorporation independently. *Insuring a Group* outlines the importance of insurance cover, and how to insure your Landcare group.

It is also essential that groups consider incorporating.

## What is Incorporation?

Incorporation is a voluntary, simple and inexpensive process that establishes your community group as a legal entity.

Incorporating allows your association to:

- continue regardless of changes to membership;
- accept gifts and bequests;
- buy and sell property;
- enter into enforceable contracts;
- sue or be sued; and
- apply for Government grants.

Incorporated associations should be non-profit organisations. This means that any profits made should be used to further the objectives of the association, not provide personal gain for its members.

## Why Incorporate?

Incorporation limits the liability that may be brought against a Landcare group, to that of the group's assets. Neither local, state or Commonwealth governments, or Landcare Tasmania is liable for any claims made against your group. Your group is entirely responsible for its actions and liabilities.

An unincorporated group or organisation has no separate legal identity from that of its members. It is simply a group of people who are doing the same thing together. If any actions are brought against the group, the courts need to place responsibility somewhere, and this responsibility is likely to be allocated to the committee. Without incorporation, individuals and their assets are exposed to legal risk.

Additionally, there can be difficulties opening bank accounts, acquiring insurance, and identifying who owns what property (eg tools and equipment) without incorporation. Many organisations will only fund incorporated organisations.

Incorporation is a choice. It is not a legal requirement but Landcare Tasmania recommends that all groups either incorporate or sit beneath an incorporated body. Incorporation improves group access to funding and reduces legal risks to members. The peace of mind in having the right protection for you and your members is worth it!

# Getting Incorporated

It's not hard:

- Call a meeting of the members;
- Decide who will fill the roles of the Committee (Secretary, Public Officer, President, Treasurer);
- Vote upon and approve the name of the association;
- Approve the constitution/rules (associations are governed by a set of rules – you can create your own or adopt a set of Model Rules);
- Print, complete and lodge the Application for Incorporation form or complete the electronic form online;
- Print, complete and lodge the Public Officer Particulars Form;
- Lodge the forms together with the constitution/model rules and the incorporation fee.

The fee to incorporate is a one-off amount paid when you initially incorporate. This increases after each financial year (1 July). In 2012/13 it was \$140. Check current fees with Consumer Affairs and Fair Trading. (An additional fee is paid annually when your group lodges its Annual Return.)

Incorporation forms can be lodged electronically; by post to Consumer Affairs and Fair Trading, GPO Box 1244, Hobart TAS 7001; or in person at any Service Tasmania outlet.

Once the application has been approved a Certificate of Incorporation will be issued to signify that incorporation has been granted.

## Model Rules: Your Constitution

The constitution is a set of rules or guidelines outlining how the association and its members should operate. The standard Model Rules can be adjusted to suit the requirements of your group and adopted as your constitution. A set of Model Rules from the Tasmanian Legislation website is a good reference but may be more detailed than you require. The below provides a general outline for your Constitution.

### **Model Landcare Group Constitution**

#### **1. Title**

The organisation shall be titled “ ... “ (“the Group”)

#### **2. Membership**

Any member of the community declaring an interest in the objectives of the Group may, upon application and payment of the membership fee, become a member of the Group.

#### **3. Objectives**

(List your objectives here).

#### **4. Management**

The Management of the group shall be vested in a committee known as the “Executive”.

##### **(a) Executive**

- i. President
- ii Vice-President
- iii. Secretary
- iv. Treasurer

##### **(b) Election**

- i. The officers shall be elected at the Annual General Meeting (AGM) of the Group and hold office for the ensuing year.
- ii. If an office becomes vacant the remaining members of the Executive may appoint a member to that office or call for nominations from members.

##### **(c) Records**

The Executive shall keep membership records, maintain accurate financial records and record activities for the Group.

## **5. Executive Meetings**

Meetings of the Executive shall be as required.

Members of the Group may attend these meetings and may be invited to vote on business.

The President shall preside as Chairman of the Group or in his/her absence as decided by the members present at the meeting.

## **6. Meetings**

Meetings of the Group, working bees, educational meetings etc shall be held as required.

## **7. Annual General Meeting**

The AGM of members shall be held within three months of the end of the Group's financial year.

## **8. Quorum**

At Executive meetings a minimum of 3 officers shall form a quorum for the meeting.

At general meetings a minimum of 5 members shall form a quorum for the meeting.

## **9. Voting**

A consensus approach to decision making will be encouraged.

When voting formally, each member has one vote only.

The Chairman may exercise a deliberate and casting vote where a deadlock in voting arises.

Votes may only be given personally and not by proxy.

## **10. Finance Records**

A true and accurate record shall be kept by the Treasurer for monies received and expended by the Group.

The Records shall be open to inspection by the members, subject to reasonable restrictions.

## **11. Accounts**

The Executive shall be open and hold accounts in financial institutions as determined by the Executive in to which all monies received shall be paid as soon as possible.

No cheques or cash shall be drawn on the accounts except for payment of expenditure authorised by the Executive.

Payments shall be authorised by two members of the Executive.

## **12. Subscriptions**

The amount of annual subscription shall be as determined by members at the annual general meeting.

## **13. Financial Year**

The financial year of the Group shall be from the First of July to the Thirtieth of June of the following year.

## **14. Amendments**

The constitution may be amended only at AGMs and only upon 30 days notice being given to all financial members.

## **15. Non Profit Group**

The assets and income of the Group shall be applied solely in furtherance of its above mentioned objectives and no portion shall be distributed directly or indirectly to the members of the Group except as bona fide compensation for services rendered or expenses incurred on behalf of the Group.

## **16. Dissolution**

In the event of a dissolution of the Group any assets shall be transferred to a like group or association having similar objectives and which is a non profit organisation exempt from income tax under Section 23 of the Income Tax Assessment Act.

A motion to dissolve the Group may only be taken at a special general meeting which all financial members must have been notified of and only upon 75% of the members present approving of the dissolution.

In the event of the Group being wound up:

- (i) every member of the Group, and
- (ii) every person who, within the period of twelve months immediately preceding the commencement of the winding up, was a member of the Group, is liable to contribute to the assets of the Group for payment of the debts or liabilities of the Group and for the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves such sum, not exceeding \$1.00, as may be required, but a former member is not liable to contribute in respect of any debt or liability of the Group contracted after he/she ceased to be a member.

## Amendments and Disputes

Amending an association's constitution is done through the passing of a Special Resolution. The association must advertise its intent to make changes to its constitution and then hold a Special General Meeting to vote on the changes. If three quarters of the members present at the meeting vote in favour, the changes are passed.

The Public Officer is required to notify Consumer Affairs and Fair Trading of the amendments within one month by lodging a Notice of Special Resolution, and attaching a copy of the changes.

Members are expected to abide by the association's constitution. Consumer Affairs and Fair Trading does not have the authority to investigate a breach of an association's constitution, or any dispute that may arise between members. Any dispute or issues should be dealt with internally or by seeking independent legal advice.

## The Public Officer

Every incorporated association is required to have a Public Officer who must be 18 years of age or older and a resident of Tasmania.

The Public Officer is the group's official nominee on whom notice is required to be served in the legal sense. The Public Officer must keep the Office of Consumer Affairs and Fair Trading informed of the association's constitutional changes and financial situation (via the Annual Returns).

Unless the rules of your group say otherwise, your committee is free to select whoever they think is best for the job. It may be a committee member, a member of your group or someone external to your group.

If the Public Officer changes address, a form notifying this change must be lodged with Consumer Affairs and Fair Trading within 14 days.

## Annual Returns

Incorporated groups must lodge an Annual Return with Consumer Affairs and Fair Trading within six months of the close of the association's financial year. Your group may nominate any date to start its 12 month financial year. You may choose the standard financial year (1 July – 30 June) or you may decide another period (ie October 1 – Sept 30 or 1 April – 31 March). It's up to your group.

An Annual Return is not required until the association has completed its first full financial year as an incorporated body. The return then needs to be lodged within six months of this financial year.

The Annual Return must contain:

- an income and expenditure statement;
- a list of names and residential addresses of the committee members; and
- an Auditor's Report confirming the accuracy of the income and expenditure statement.

The Annual Returns can be lodged electronically; by post to Consumer Affairs and Fair Trading, GPO Box 1244 Hobart TAS 7001; or in person at any Service Tasmania outlet.

There is also an Annual Return fee which must be paid each year when the return is lodged. This increases each year on 1 July. In 2012 it was \$56 (if lodged within six months of the end of the group's elected financial year). Late fees apply. Check Consumer Affairs and Fair Trading for more information.

## Auditing

Incorporated groups must have their financial affairs audited by a person who is a registered company auditor or who is approved by Consumer Affairs and Fair Trading.

Maintaining good records (including receipts, invoices and funding contracts) is essential to keep costs down for your annual audit. It is best to work closely with your nominated auditor to clarify what records you will need to supply and how to present them for auditing.

Auditing costs can vary greatly – shop around for a competitive price or contact Landcare Tasmania regarding the pro bono auditors register.

# Exemption from Auditing

An association can seek an exemption from auditing if:

- the association has total revenue in any financial year of \$40,000 or less and total assets of \$40,000 or less not including 'real property' such as land and real estate; and
- a three quarter majority of members have voted in favour of not having the association's accounts audited.

If an association wishes to obtain an exemption from the audit requirement they should make a request with their next Annual Return. The request must include:

- a statement from the Public Officer that the association's annual income does not exceed \$40,000 and the association's assets, excluding real property, do not exceed \$40,000;
- a statement from the Public Officer that a three quarter majority of members have voted in favour of the exemption;
- an annual return signed by the Public Officer containing:
  1. a statement of the association's income and expenditure for that financial year;
  2. a list of the names and residential addresses of the association's committee for that financial year; and
  3. the lodgement fee.

All applications for exemption will be considered and the association will be informed in writing of whether or not exemption is granted. Due to the changing finances of incorporated bodies, the exemption must be applied for after the end of each financial year. An incorporated association may fall outside the guidelines during a financial period and no longer be eligible for an exemption or may wish to undergo an audit periodically.

For more information see the *Guide to Audit Exemption* or contact Consumer Affairs and Fair Trading on 03 6233 2225.

## WEBLINKS

[www.consumer.tas.gov.au/registrations/incorporated\\_associations](http://www.consumer.tas.gov.au/registrations/incorporated_associations) for information on incorporation, confirmation of the current Annual Return Fee, forms to confirm or change your Public Officer, the Guide to Audit Exemption and more.

[www.ourcommunity.org.au](http://www.ourcommunity.org.au) for information on incorporation.

[www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au) for incorporation legislation and Model Rules.

[www.landcaretas.org.au](http://www.landcaretas.org.au) for *Forming a Group, Insuring a Group, Finding Support and Running Safe Activities* resources.

# Landcare Tasmania Inc.

Support for administration costs (including incorporation fees) is available for Landcare groups through Landcare Tasmania.

Landcare Tasmania is the peak body that represents, strengthens, supports and grows Tasmania's community Landcare movement to improve the health of our natural and working landscapes.

Landcare Tasmania's objectives are to:

- Promote community Landcare;
- Connect people and organisations with an interest in Landcare;
- Support landcarers with administration, information and funding; and to
- Represent community Landcare as an advocacy body.

Landcare Tasmania supports member groups with information, insurance, planning, funding, and connecting them with volunteers, information and opportunities.

Join today. Annual membership is \$27.50 (inc GST). Member renewal is due on 1 July each year.

There are many benefits of membership including the Landcare Assistance Program (LAP). This funding provides support to Landcare Tasmania member groups for insurance and administration (including the cost of incorporation). If your group will be paying for its own insurance you can apply for \$400. If you won't be paying for your own insurance you can apply for \$250. Previous LAP funding must be acquitted and groups must be a current member of Landcare Tasmania.

The LAP is supported by the Tasmanian State Government.

## Other Support Available

Support may be available for Landcare groups through NRM professionals working at various levels of government, in NRM regional bodies, local experts and through other groups doing similar work across the state.

There are many events, training opportunities, field days and funding programs. Check the Landcare Tasmania monthly e-bulletin for updates. Apply for the LAP funding and look out for other grant programs from the Australian Government, NRM regions and philanthropic trusts to suit group projects.

For a *who's who* with introductions to organisations, contact information and funding links, see *Finding Support*.

Other Landcare Tasmania resources include:

- *Forming a Group*
- *Insuring a Group*
- *Finding Support*
- *Running Safe Activities*
- *Action Planning*



**Landcare Tasmania Inc.**

ABN 50 622 521 764

148 Elizabeth Street, Hobart

PO Box 21, South Hobart

Tasmania 7004 Australia

t: 03 6234 7117

f: 03 6234 7127

e: [info@landcaretas.org.au](mailto:info@landcaretas.org.au)

[www.landcaretas.org.au](http://www.landcaretas.org.au)



Produced with support  
from the Tasmanian  
Community Fund