



Is Your Group Incorporated?

Rarely do Landcare group activities result in medical emergencies or legal actions against that group. However, there is the ever present risk that one day something could happen and your group could be faced with legal action or liability for damage or personal injury.

Incorporation is a system of registration with the State Government that gives an association or community groups – like your Landcare group – certain legal protection and advantages in return for accepting some basic legal responsibilities that come with registration.

This page provides information about incorporating your group to provide a level of protection to your office bearers and members. If your group is not incorporated, we highly recommend you start that process today.

The notes below are a guide to assist you using the CBOS website and provide additional relevant information. Most of the links will take you to the appropriate pages of the excellent Consumer, Building and Occupational Services (CBOS) website.

Please note: 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.

A summary of the benefits of incorporating your group:

- Creates a useable and well recognised legal entity for Landcare activities
- Is a suitable and inexpensive structure for all grant applications
- Enables the group to enter into contracts
- Limits the liability of members
- Means you can accept gifts and donations
- Provides an automatic approval to solicit for charitable donations
- Makes it easy to open and operate your groups own bank account

[click here](https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations/what-is-incorporated-association) for further information

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The risks of NOT being an incorporated

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 main people organising activities. Without incorporation, these 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 (e.g. tools and equipment) without incorporation. Many organisations will only fund incorporated organisations, so if you are unincorporated you may have the extra complexity of finding an organisation to act as a 'sponsor' for you, for example when applying for a grant.

The peace of mind in having the right protection for you and your members is worth it!

How much does it cost to incorporate a group?

The cost for incorporating a group is \$162 (as at March 2020). For more up to date information [click here](#).

http://www.consumer.tas.gov.au/forms_and_fees

What does my group need to have to incorporate?

- An appointed Public Officer
- Appointed committee members
- An agreed upon set of Rules or Constitution, including an overarching Purpose and list of Objects for your association. It is important that you carefully consider and record your group's basic objects and purpose and that they contain an overriding object to perform any supporting additional functions. Take your time with this section and consult your members and seek further advice if necessary.
- Funds to pay the incorporation fee
- A completed Incorporation Application Form

What should my group do first if we want to get incorporated?



Before getting underway, it is recommended you review the CBOS webpage on applying for incorporation - <https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations/applying>. Here are steps to follow to become an incorporated group:

1. At your first meeting, decide who will be the Public Officer.

This person 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 CBOS informed of the association's constitutional changes, office bearers and financial situation through an Annual Returns. (Note there are exemptions from reporting if you also register with the Australian Charities and Not for Profits Commission – see <https://www.acnc.gov.au/for-charities/manage-your-charity/other-regulators/state-and-territory-regulators/regulation-3>)

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, they must lodge a form with CBOS notifying this change within 14 days. See <https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations/changing-incorporated-association-details>

2. Decide who will fill the roles of the Committee.

Most associations have a Secretary, President and Treasurer. If that structure doesn't fit your group's needs we recommend seeking legal advice.

3. Vote on and approve the name of the association.

You can search the availability of a prospective name and register that name on the Australian Securities and Investment Commission (ASIC) website – <https://asic.gov.au/online-services/search-asics-registers/business-names/>

4. Approve the constitution/rules

Associations are governed by a set of rules that need to be lodged with CBOS and are then publicly available. You can create your own or, for simplicity, use the 'Model Rules' – a template provided by CBOS that you can adapt to your needs – see

<https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2017-072>



This is an important step and requires consideration of what you intend doing and how you will govern yourself. In particular, please pay attention to:

Rule 1 - Insert the name of the Association.

Rule 3 - Insert the Association's office current address. Be sure to retain the words relating to any future changed address, otherwise you'll have to change your constitution if you change your address.

Rule 4 – Insert the Basic Objects of the Association – this defines the legal scope of the work the group does and can legally do. Note that CBOS only requires the Basic Objects to be included in the application form. Landcare Tasmania strongly recommends including these in the Association's Rules so they can be easily referenced.

Rule 6 - insert the individual liability of members - a nominal amount of \$20.00 is common

Rule 25 - insert the number of committee members

Rule 32 - insert the annual subscription amount each member is to pay.

5. Lodge the application form

The application form for incorporation can be downloaded at

<https://forms.business.gov.au/smartforms/djt-ocaft/application-for-incorporation>

Lodge the forms together with your Constitution/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).

Incorporation forms can be lodged:

- online;
- by post to Registration Services, Consumer, Building and Occupational Services, PO Box 56 Rosny Park TAS 7018; or
- or in person at any Service Tasmania outlet – see <http://www.service.tas.gov.au/about/shops/>

Once the application has been approved a Certificate of Incorporation will usually be issued in 5 - 10 working days to confirm that incorporation has been granted.



Does Landcare Tasmania offer the service of helping groups become incorporated?

Currently this is an added service that we provide when we have the capacity to do so. If you are a member and would like some help please contact us and we will do what we can within our means to help. <https://www.landcaretas.org.au/contact/>

What to do after receiving your Certificate of Incorporation

Three important steps:

- 1. Apply for an Australian Business Number (ABN)** click here - <https://www.abr.gov.au/business-super-funds-charities/applying-abn>
- 2. Open a bank account** - your bank will generally require your Certificate of Incorporation, confirmation of ABN registration as well as your constitution /model rules and details your committee members who are likely to be signatories to the account.
- 3. You may wish to meet with your accountant or financial adviser** to see if any additional registrations should be undertaken such as GST, BAS or other tax office matters as well as possible registration with the Australian Charities and Not-for-Profits Commission if you intend to operate as a charity - <https://www.acnc.gov.au>

Many organisations will require 'not-for-profit' and 'winding up' clauses to access tax concessions available to charities and not-for-profit entities, such as tax exemption and deductible gift recipient (DGR) endorsement. The model rules in their current form do not contain clauses that would satisfy the requirements of the Australian Tax Office (ATO). If your group hopes to get tax exempt and DGR status, you should get specific advice on the amendments to the model rules which are required by the ATO and are suitable for your organisation. The Not-for-profit Law Centre has drafted examples of some of the ATO approved rules that organisations can consider adopting - see www.nfplaw.org.au/tax.

Where can I find more information about incorporating my group?

The Tasmanian Government CBOS website is a good place to look - http://www.consumer.tas.gov.au/registrations/incorporated_associations



The CBOS website addresses most other matters that will come up around being incorporated and it is recommended that before incorporation the proposed committee sits down and works through the website and seeks further advice if needed. Remember you can call the CBOS for help if needed.

What ongoing obligations will our group have?

- 1.** You will need to lodge an Annual Return with CBOS, click here for the lodgment page - <https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations/lodging-annual-returns>. Note that this requirement does not apply if you also register with the ACNC.
- 2.** If your annual revenue exceeds \$250,000 you will need an auditor to audit your annual financial report.
- 3.** If there are any changes to your Public Officer you must advise CBOS - see details above. Or click here for CBOS link - <https://www.cbos.tas.gov.au/topics/clubs-fundraising/incorporated-associations/changing-incorporated-association-details>
- 4.** At or before your annual general meeting each year you should review your Constitution/ Rules and any other operating system documents to ensure that they are updated if necessary and at all times fully reflect your operation as a Landcare group.