

NSW Landcare Fact Sheet 1

Incorporation



Incorporation reduces risk and increases protection for Landcare group members. Incorporation provides groups with a legal identity distinct from the individual members of the group.

Information in this fact sheet comprises:

- *Protecting group members*
- *Forming an incorporated association*
- *Public officer*
- *Insurance*
- *Group rules*
- *Obligations*
- *Landcare networks*

Protecting group members

Incorporation provides important legal protection and benefits to Landcare and other community natural resource management (NRM) networks and groups, known as “associations” for the purpose of incorporation.

Incorporation of an association creates a new legal entity. The debts and liabilities of the association thereafter belong to the association, not to its members. It therefore offers a level of protection to group members from being held personally liable for the association’s liabilities, similar to how a private company provides protection to its shareholders (known as “limited liability”).

If a member attempts to use the association to obtain financial benefits for themselves, or causes the Association to unreasonably incur debts, then there may be personal liability. Appropriate public liability insurance should be obtained in order to cover all possible risks and losses that members of an association may be exposed to.

An incorporated group continues regardless of changes to its membership, unless its registration is cancelled. Incorporated groups can accept grants, gifts or bequests, have the power to hold or acquire property, can enter into and enforce contracts, can become an employer and can sue or be sued.

Incorporation is recommended for all Landcare and other community NRM networks and groups. It is particularly important for groups employing staff and handling public funds, and may be a requirement of the funding body.

Landcare in NSW is supported by the Department of Environment and Climate Change and the NSW Catchment Management Authorities (CMAs). If you have a question regarding these Fact Sheets please contact your local CMA office (Details on your nearest CMA office may be found at www.cma.nsw.gov.au) or e-mail landcarensw.landcarensw@dnr.nsw.gov.au .

Incorporation

Forming an incorporated association

The Associations Incorporation Act 1984, administered by the NSW Office of Fair Trading, provides community groups such as Landcare networks and groups with a relatively simple and inexpensive means of becoming a legal entity, compared with forming a company.

The first step in forming an incorporated association is to contact the Office of Fair Trading for information, either by telephoning 13 32 20 (Fair Trading Centres) or by visiting www.fairtrading.nsw.gov.au (click on the “Associations and Cooperatives” shortcut, then click on “Associations”).

Public officer

The group needs a public officer if it intends forming itself as an incorporated association. The public officer can be any person 18 years or over who is a NSW resident. This officer is the primary contact with the Office of Fair Trading, lodges documents with the Office and keeps a register of members of the group's management committee.

Insurance

It is no longer compulsory for an incorporated association to hold public liability insurance, although it is still recommended.

The removal of the requirement for incorporated associations to hold public liability insurance does

not mean that these associations are immune from public liability claims. The question of an association's potential liability and the appropriate insurance to be taken out is a matter for each association to consider.

When applying for funding or negotiating a contract, for example, with a catchment management authority (CMA), the group may need to have several types of insurance. Please request information on specific insurance requirements from the funding body or CMA.

For further information see the fact sheet ‘Insurance’.

Group rules

All incorporated associations are required to have a documented set of rules that state the group's objectives and govern how they operate.

The Office of Fair Trading has developed a set of Model Rules for groups to use. You may use these Model Rules as they are, or modify the Model Rules to suit your needs, or create your own rules, but there are certain matters that the Office requires to be covered.

The Model Rules are included in the Associations Incorporation Regulation 1999. A printed copy may be obtained by telephoning your local Fair Trading Centre on 13 32 20. The Model Rules are also available from the Office of Fair Trading website, www.fairtrading.nsw.gov.au.

Incorporation

Obligations

The public officer must lodge an annual statement with the Office of Fair Trading. The Office must be informed if there is a delay in preparing the annual statement or if the group changes any of the following: public officer, contact address, group name, rules and objectives, or management committee members.

Landcare networks

Landcare networks are groups of Landcare groups that have come together at a district or regional level. These networks often employ staff, manage large projects and deal with relatively large amounts of public funds.

Incorporation is especially important for Landcare networks.

Unincorporated Landcare networks should consider incorporation in order to minimise potential liability for its members.

April 2007