

Throughout this document the term community Natural Resource Management Group or NRM groups is used to include all the following types of community groups:

- Landcare
- Coastcare
- Bushcare
- Rivercare
- 'Friends of' groups
- Waterwatch
- Wildcare Inc.

These 'care' groups all work toward improving Tasmanian sustainable land management practices.

Other resource booklets available for download from our website or by contacting the office at (03) 6234 7117 include:

So, you want to insure a group
So, you want to plan for your group's success
So, you want to work with government
Extra Hands procedures manual



Contents

Welcome	2
Incorporation – Here's how!	4
Why Incorporate	4
Steps to Incorporation	5
The Public Officer	7
Audits and Annual Returns	8
Model Rules: 'Care' Group Constitution	10
Tax Exemptions	15
Guidelines for a New Incorporated Assoc	16
Checklist for Incorporation	22

Note:

This tool kit has been prepared to provide guidance on Incorporation issues relevant to Tasmanian Landcare Groups. The kit must not be regarded as "legal advice". Fees and costs detailed were correct at time of printing. Please contact relevant organisations directly for current costs.

The Tasmanian Landcare Association Inc and local Landcare and NRM officers will provide information and assistance, however it is the responsibility of individual Landcare Groups to make their own informed decisions regarding Incorporation and choice of Insurance.



Group Notes

Welcome!

What is this kit for?

This tool kit gives guidance to Landcare, Waterwatch, Coastcare and associated 'care' Groups on Incorporation.

The tool kit provides brief background information on each issue and then provides the steps and forms necessary to apply for incorporation.

Good Risk Management

The Tasmanian Landcare Association recommends that all Landcare groups acquire Incorporation, Public Liability Insurance and Volunteer Workers Insurance.

We believe these administrative components are essential for all Landcare groups.

The aim is for **Good Risk Management**: to minimise the risk of groups and individuals to liability and legal action.

Landcare groups have the responsibility to protect their members. Neither the State, Commonwealth or TLCA

Checklist for Incorporation

- ☐ Obtained authority for incorporation from a general meeting.
- ☐ Lodged an application for incorporation (Form 2) with the Business Affairs Branch
- ☐ Lodged your set of rules (ie Landcare Group Constitution) if Business Affairs Model Rules are not adopted *or* list of alterations and modifications (if Business Affairs Model Rules adopted)
- ☐ Paid fee of \$125
- ☐ Lodged notice of Particulars of Public Officer (Form 6). This may be done up to 14 days after incorporation but is best lodged with Form 2.
- ☐ After Certificate of incorporation has been issued:
- ☐ Obtained a Common Seal (rubber stamp) with the Association's full name
- ☐ Keeping a set of books to record financial transactions of the Association and a register of members;
- ☐ Appointed an Auditor.
- ☐ Determined the financial year of the Association (if not already set by rules).
- ☐ Lodged an annual return with the Business Affairs Branch within 6 months of the end of the financial year of the Association. The Public Officer is responsible for this and a \$50.00 lodgement fee is payable.

... incorporation and insurance are essential for all Care groups.

is liable for any claims made against your group: your group is entirely responsible for its actions and liabilities.

The Process of Incorporation

Getting Incorporation and Insurance requires a bit of bureaucracy:

- a few forms,
- a few steps to follow,
- and some cash.

However the forms are not difficult, the steps are straight forward and the costs are manageable - so don't be discouraged!

The peace of mind of having the right protection for you and your members is worth the small amount of time and money needed to complete the forms and apply.

If you need any assistance, please call the Tasmanian Landcare Association (03 6234 7117 or 0419 529 807).



Incorporation — Here's How!

Why Incorporate?

The TLCA recommends that all Landcare groups acquire incorporation. Why?

Incorporation is now often **required** for groups which receive Australian government funds.

Incorporation limits, in most cases, the liability of any actions or suits that may be brought against a Landcare group to that of the **group's** assets.

Without incorporation, **individuals** and their assets are **liable**.

Incorporation gives legal protection to members and improves group access to funding

Risks of Not Incorporating

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. Usually it operates according to its

- A copy of minutes of any meetings held by the association
- A detail set of books showing each cheque drawn with an allocation to an expense type. This can be in electronic format if a suitable software package is used as a cash book.
- A detail set of books showing all cash receipts and their allocation to an income type. This can be in electronic format if a suitable software package is used as a cash book.
- A bank reconciliation at year end.

All of the above are needed for an audit to be carried out, but there is optional information that can be supplied, which will reduce the cost of the audit.

The Optional information would be:

- A statement of Income and Expenditure
- A statement of Assets and Liabilities
- Bank reconciliations for each month of the year
- Bank statements received after year end
- All outstanding invoices not paid at year end.

The difference of supplying one or the other set of information (Essential or Optional) is in the cost of doing the audit.

If just the essentials are supplied then the cost of the audit could be around \$300 to \$750 more than if both the Essentials and the Optionals are supplied.

However, this would vary depending upon the Accountant used, and quotes should always be obtained before proceeding with an audit.

- a servant of the association
- a partner, employee or employer of the public officer or a committee member.

The auditor will require supporting documentation for the transactions during the year.

Contact your auditor well in advance of the end of the financial year to arrange a mutually convenient time for the audit to be performed.

Documents Required for an Audit

To audit a set of Association books the following is required by the Auditor:

Essentials

- *A copy of the rules of the Association*
- *A list of the Officer Bearers and addresses, along with those authorised to sign cheque accounts, etc*
- *All cheque butts from cheques drawn during the year*
- *All deposit books and/or slips for the year*
- *All invoices that were paid for the year, with the cheque number written on them, so that they can be crossed referenced to the cheque butts*
- *The original bank statements for all accounts held by the Association*
- *A letter from their Bank confirming the balances of their accounts and that there are no loans outstanding for the Association, and if there are, then the amount of the loan and the terms and conditions*
- *A set of last year's accounts, unless this is the first year*

constitution (or rules), which, legally speaking, is a contract between the members.

The group's assets must be held in trust on its behalf and the liability of the members is generally **personal** and not limited.

As a result committee members may be reluctant to personally bear the financial responsibilities of their unincorporated Group.

If any actions are brought against the Group, the Courts need to place responsibility somewhere, and this responsibility will generally be allocated to the committee, the Secretary or the person signing the document.

Not incorporating exposes individual members to legal risk. TLCA recommends all groups either incorporate or sit under another umbrella as an extra hands group. (See extra hands booklet for details)

How Does a Group Incorporate?

Incorporation is fairly straightforward and is not overly expensive.

There is a one-off fee of \$125 and then annual auditing and lodgment fees.

Steps to Incorporation

To Incorporate, follow the steps on the next few pages. Use the checklist at the end of this booklet to make sure you've covered them all.

You will also need the following documents:

- Model Rules (Example of Landcare Group)

Constitution) - available in the centre of this booklet and from the TLCA web page.

- Application for the Incorporation of an Association (Form 2)
- Public Officer Application (Form 6)

These last two can be downloaded from the Business Affairs website.

Step 1. To be eligible to incorporate your Group must have:

- a set of objects and rules (Use the “Landcare Group Constitution”);
- at least five members;
- a purpose.

Step 2. To apply for incorporation an existing Group must hold a general meeting:

- (a) all members should be given at least 21 days notice of the meeting;
- (b) two special resolutions are to be considered by the meeting;
- (c) members should be informed that these 'special resolutions' are that:
 - a constitution suitable for incorporation be adopted, and
 - a person be authorised to apply for incorporation;
- (d) members should be given access to the constitution prior to the meeting;
- (e) a quorum must be present, and at least three

Application for Incorporation of an Association (Form 2) and a Public Officer Application are downloaded from:

www.consumer.tas.gov.au

should be done regularly, depending on the volume of transactions. At the very least, it should be performed at the end of the financial year, but it is recommended to be done monthly, or when bank statements are received.

Record Keeping

All records should be kept for at least seven years.

Accounts

At the end of the financial year, a summary of receipts and expenditure (by type) should be prepared. The difference between receipts and expenditure will give rise to a surplus or deficit.

The accounts should be presented to the auditor, who will advise on the appropriateness of the format.

The accounts and auditor's reports thereon shall be lodged with the Commissioner within six months of the end of the financial year. The lodgement fee should accompany this return.

Also required to be lodged with the accounts and auditor's report is a list of Committee members and their residential addresses. This list must be signed by the auditor.

Audit

An audit is required each financial year. The auditor usually is a registered company auditor. The auditor cannot be:

- the public officer or a committee member of the association

so long as it includes all the above information. An invoice (or other supporting documentation) should be obtained for all payments. This should be retained for audit purposes.

It is recommended all payments should be ratified during meetings. The meeting should approve all payments made since the previous meeting and any invoices received and not yet paid.

Minutes of Meetings

Minutes should be kept of all meetings. These should be signed as a true record of the meeting when tabled at the next meeting.

It is recommended all cheque payments should be recorded in the minutes (a list of the cheques for that meeting should be included in the minutes or as an attachment).

Bank Account

There should be a separate bank account in the name of the incorporated entity. There should be two signatories to the bank account. The signatories would normally be any combination of the Secretary, Treasurer or President.

Bank interest and bank fees will be earned / incurred without receipts or cheques being written. When the statements are received, these amounts should be written up in the cash book in a similar fashion to receipts and cheques.

It should be possible to reconcile the movements in the bank account balance to the receipts and payments recorded in the cash book. This is a good check on the accurate recording of receipts and payments and

A model Landcare group constitution can be downloaded from the TLCA's website:

www.taslandcare.org.au

quarters of those who vote must approve a set of rules and objects for incorporation and authorise a person to apply for incorporation.

Step 3. From here the next step is to:

- (a) lodge the , "Application for the Incorporation of an Association" (Form 2) with the Business Affairs Branch.

The application must include a copy of the Rules of the Association (ie Landcare Group Constitution) or if Business Affairs Model Rules have been adopted, a list of modifications subject to which they have been adopted.

A fee of \$125 is payable on lodgement of the application. (There is no GST associated with this.)

- (b) Once the application has been checked by the CAC a Certificate of Incorporation will be issued to signify that incorporation has been either granted (or not granted).

The Public Officer

When you lodge your Application for Incorporation you should also lodge the attached, "Particulars and Changes of Particulars of Public Officer" (Form 6).

What is a 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 principal role of the Public Officer is that of an official of the Group on whom notice is required to be

served in the legal sense. For example, a summons to appear in court has to be served on the Public Officer.

The Public Officer must keep the Business Affairs Commission informed of constitutional changes in the Association and its financial situation.

Unless the rules of your Group says otherwise, your committee is free to select whoever they think is best for the job - whether it be a committee member, a member of your Group *or even an outsider*.

If the Public Officer changes address, a form notifying this change must be lodged at the Commission within 14 days. It is also the Public Officer's duty to notify the Commission of any changes in the Committee within 14 days of the change.

How to Contact Business Affairs Branch:

Business Affairs Commission
GPO Box 249C
Hobart, 7001

Phone: 03 62 33 2225
Web Site: www.consumer.tas.gov.au

Audits and Annual Returns

Keeping good records is **essential** to keeping the costs of your annual audit down. It is best to work closely with your nominated auditor to clarify what records you will need to keep and how to best keep them.

The section "Guidelines for New Incorporated Associations" have been kindly provided to help groups understand how to keep their records and documents for an auditor.

Incorporation is governed by state legislation and administered by the Business Affairs Branch, Consumer Affairs and Fair Trade, Department of Justice

keeping purposes. (All copies of cancelled receipts should be retained.)

Receipts should be banked promptly and intact.

A cash book should be purchased. Periodically (at least monthly), all receipts should be written up in the cash book and summarised. They should be classified by their type, for example, grants received should be classified separately from other receipts. The receipt number for each receipt should be recorded in the cash book.

It should be possible to account for the numerical sequence of receipts. All receipt books should be retained for audit purposes. Also, if there is supporting documentation relating to a receipt, this should also be retained for audit purposes (for example, a letter accompanying a grant cheque).

Payments

Cheque books should be used for all payments. The cheque butt should record the details of:

- Date of payment
- Payee name
- Description of payment (for example, lodgment fees).
- The cheque number should be written in the cash book in numerical order and the cash book should account for all cheques.

Issuance of Receipts

An electronic software package can be used for the management of the cash book and issuance of receipts



Guidelines for new Incorporated Associations

(Prepared by Deloitte Touche Tohmatsu)

The following guidelines for new incorporated associations should be read in conjunction with the rules of the association and the Associations Incorporation Act. The following is not intended to be an exhaustive list of all procedures required in setting up a new incorporated association and is for general guidance only.

Receipts

Prenumbered duplicate books should be obtained. Receipts should be written for all receipts of cash and cheques and the original issued where possible. The duplicate should be retained for internal record

Audit Requirements for Incorporated Groups

Incorporated Groups must have their financial affairs audited at least once per year by a person who is a registered company auditor or who is approved by the Business Affairs Commission to conduct the audit.

It is important to remember to keep all supporting receipts, invoices and other documentation.

Groups can try and get an exemption from auditing simply by writing Business Affairs Branch a letter, however an exemption has never been granted.

Audit costs can vary greatly - it is always a good policy to shop around for a competitive price.

Annual Returns

Incorporated associations have to lodge an annual return to the Consumer Affairs and Fair Trading within 6 months of the close of the financial year of the Association.

Your group may nominate **any** date to **start** its 12 month financial year. An audit is **not required** until the Association has **completed** its **first** full financial year as an incorporated body; the audited return then needs to be lodged **within six months** of this financial year.

A \$50.00 fee has to be paid when the return is lodged. Late fees may also be payable if the return is lodged more than 6 months after the end of the financial year of the Association.

The Annual Return should include:

- (1) the name and registered number of the

Association;

- (2) the date of the last AGM;
- (3) the date on which the last financial year of the Association ended;
- (4) a report on the accounts of the Association stating whether the Association has in the opinion of the auditor kept proper accounting records and other books during the period covered by those accounts;
- (5) such statements that are adequate to explain your group's financial transactions for that financial year;
- (6) a list, signed by the auditor, of the names and residential addresses of the committee for that financial year.

**Don't forget...
Incorporated
associations
have to lodge
an annual
return each
year.**

Model Rules: 'Care' Group Constitution

In the centre of this booklet is an example of a set of "Model Rules" that can be adopted by Landcare groups as a "Landcare Group Constitution". It can also be downloaded from www.taslandcare.org.au.

This constitution can be adopted as is or adjusted to suit the requirements and objectives of your group.

However it is important to retain the wording detailed in Section 16 so as to gain the benefits of limited liability.

Sections 15 and 16 are also critical to adopt as they are included in order to help your group qualify for exemption from income tax.

**'Jumping
through the
hoop' of
incorporation
is a small
price to pay
for the
benefits
received.**

A set of Model Rules is also available from the Business Affairs Branch, however these rules may be more legalistic and detailed than your Landcare group requires.

Tax Exemptions

Landcare groups are not exempt from sales tax, however they can be exempt from income tax (ie any interest earned in bank accounts), providing that their constitution includes the appropriate non-profit and dissolution clauses (as detailed in sections 15 and 16).

The Australian Tax Office (ATO) has advised the TLCA that bona fide 'care' groups should not have to prove their non-profit status to banks or credit unions: banks should trust the declaration by groups that they are exempt from income tax. You can also show banks your constitution, highlighting the non-profit and dissolution clauses.

However, if banks (or groups) require income tax exemption confirmation from the ATO, groups should send the ATO their constitution and request an analysis of their income tax exemption status.

Specific tax questions for the ATO regarding Landcare groups should be directed to:

Australian Taxation Office: Phone: 132869.

(Information about Landcare Income Tax Deductions and Landcare Tax Rebates for Primary Producers can be found at 13 28 61.)

Separate information on GST issues is available from the Landcare Association (6234 7117) or the ATO on 13 28 69.

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 annual general meetings 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 to which all financial members must have been notified 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.

4 of 4

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

- To reverse land, water and vegetation degradation through strategic on-ground actions.
- To increase awareness about ecologically sustainable land and water use and specific "landcare" practices.
- To demonstrate holistic approaches to natural resource management.
- To increase adoption of sustainable agricultural production systems.
- To work cooperatively with local, state and Commonwealth government departments, industry and the community to achieve sustainable natural resource management.
- To increase awareness about land (including vegetation) and water degradation and its control and prevention.
- To promote and encourage the landcare ethic in school children by involving schools in Group activities.
- To promote and encourage a landcare ethic in the general community and to organise social activities for this purpose for the whole community.
- To obtain funding assistance for all the above purposes through self funding, the Natural Heritage Trust, other government program funding, community fund-raising and sponsorship.
- To promote Whole Farm Planning and maximise attendance at local Whole Farm Planning courses.

1 of 4

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 to the election of 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 shall be held as required.

7. Annual Meeting

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

2 of 4

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.

Cheques for the issue shall be signed by at least 2 of the following officers:

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

12. Subscriptions

The amount of annual subscription shall be as determined by members

3 of 4