

Membership Status for Landcare Groups

make sure your group's membership structure covers your members

Membership

The membership arrangements and structures in Landcare and other community groups across NSW vary greatly, and while diversity does have its benefits, this may also be leaving members unprotected from both a liability and insurance perspective.

Incorporated Groups

Some Landcare Groups and the majority of district Landcare Networks and regional organisations are incorporated associations under the Associations Incorporation Act 2009 through NSW Fair Trading. As a legal entity in its own right, an incorporated association bears liability for its acts. This means that claims made against an incorporated association, either as debts or compensation for negligence, are the responsibility of the incorporated association, rather than the individuals belonging to the incorporated association.

Incorporation benefits an association and its members. However, it also brings a number of responsibilities.

Committee members and the public officer are primarily responsible for ensuring an incorporated association complies with its statutory and reporting obligations.

Failure to comply with these obligations may lead to the issue of a penalty notice, prosecution, or in some instances, cancellation of the association's incorporation.

Unincorporated groups

Many smaller and less formal Landcare, and similar type groups are not incorporated. Unincorporated groups do not have a legal identity.

Without a separate legal identity for the group, distinct from the individuals who make up the group, an unincorporated

group is unable to be sued as a separate body if it incurs liability or debt. Instead, individual members within the group could potentially bear responsibility for the group's liabilities or debts arising from its actions - particularly those members who are named in agreements.

Regional / District Landcare Networks

District Landcare Networks are groupings of Landcare and other community groups, and are generally incorporated. The membership structures and classes vary from one organisation to another, and should be defined in the organisation's constitution.

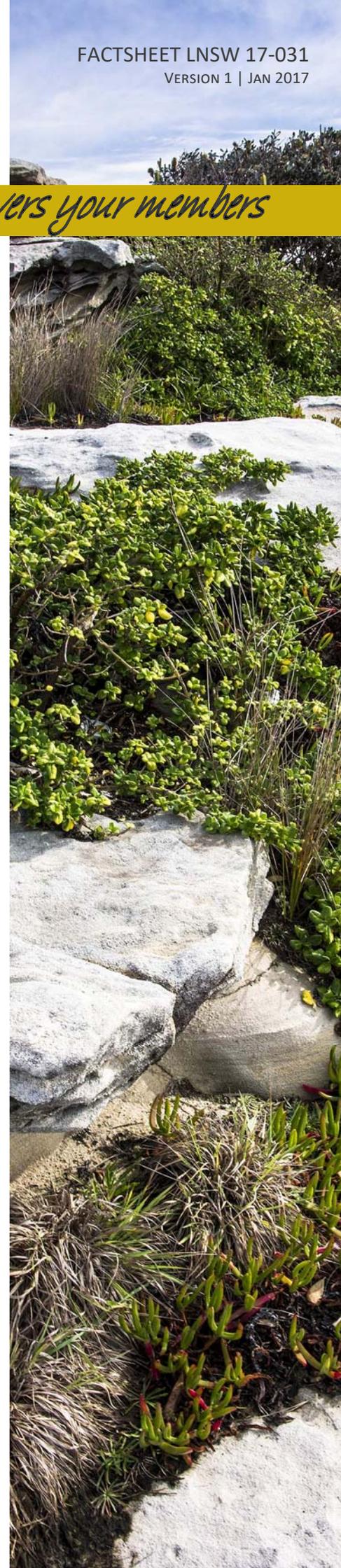
The constitution of the Landcare Network should describe the "classes" of membership i.e. individual or group. A membership register needs to be kept to authenticate who is a member.

It is important to note that only individuals or body corporates (i.e. incorporated groups) can take out a membership of an organisation.

Many Landcare Networks currently have unincorporated groups listed as members - this is incorrect as an unincorporated body does not exist at law and therefore can't transact business e.g. take out a membership, open a bank account, enter a contract etc. This can only be done by an individual on behalf of the unincorporated group, and the rights, privileges, risks, and responsibilities fall to that individual, not the members of the unincorporated group.

Groups set up under the constitution of another organisation

Groups/Committees set up under the constitution of another organisation (e.g. Section 355 committees of Council, School groups) may not be able to take



out a membership of the Landcare Network. This is because they are operating under terms of reference of their main body (e.g. Council) so it is a decision of the Council as to the ability of that group to take out a membership of another organisation. If the Committee is deemed to be functioning outside the limits of its delegated activities, powers may be revoked by written notice to the Committee signed by the General Manager or his/her representative.

Affiliate or Associate

These are loose definitions and can have different interpretations. Often they are used to indicate an organisation or person who has not taken out a full membership of another organisation, but instead is linked through a common interest i.e. they are connected to but do not have the rights nor responsibilities that membership provides, nor are covered by the group's insurance.

Volunteer

This is a term that also causes confusion – whilst members consider themselves as volunteers (i.e. they volunteer their time to the group), volunteers can also mean people who are not part of your group, but participate in activities your group runs.

Membership types and insurance coverage

Incorporated Groups

All incorporated groups should consider taking out insurances to protect their members, their committee, their volunteers and any employees. An incorporated

association is generally not covered as part of a larger group's (i.e. District Landcare Network) individual policy as they have an independent identity and make autonomous decisions relating to their own operation. To gain coverage they need to take out a policy in their own name.

Unincorporated Groups

Whilst it is possible for an unincorporated group to take out insurance, in practice insurance companies are reluctant to provide insurance coverage of this nature, as the insurance agreement must be entered into by an individual member or committee member on behalf of the unincorporated group.

It is important to realise that the insurance policy of an incorporated umbrella network does not cover unincorporated groups operating under that umbrella. Any umbrella network that has unincorporated groups as members should revisit their constitution and their membership arrangements.

Groups under the constitution of another organisation

Section 355 committees of Council, have insurance coverage provided by their Local Council, and school groups are covered under the schools insurance policy; BUT ONLY if they are a properly established group and operate in accordance with any guidelines provided.

If the group is set up as a committee/working group of an incorporated association that is not a Landcare or similar type group (e.g. a Progress Association), then they must ensure that they are

established in line with that body's constitution, and operate under their guidelines. The working group should also ensure that the insurance of the main body extends coverage for the type of activities that they will be undertaking e.g. the insurance of a Progress Association or Arts Club is unlikely to cover pest animal control activities.

Options for Unincorporated Groups

Unincorporated groups, depending on their size and activities, should consider either:

- ◆ incorporating in their own right, or
- ◆ have at least their key members become individual members of an incorporated District Landcare Network (or similar).

If the incorporated District Landcare Network's constitution allows for the formation of subcommittees or working groups, the individuals can continue to work as a subcommittee or working group that is established in line with the constitution of the main body, and operates in accordance with the terms of reference set by the main body. In this way the insurance of the main body extends to the operations of that subcommittee, as long as the main body has a line of sight over the subcommittee/ working groups' activities, as the risk remains with the management committee of the incorporated group.

Any member of the current unincorporated group who does not wish to become a member of the main body can still be covered at group activities, if they sign on as a volunteer on the day. However this excludes them from being involved in any operational or management decisions as they will not be a member of the subcommittee/ working group that has been established.

DISCLAIMER: The information contained in this publication is based on knowledge and understanding at the time of January 2017. However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of Landcare NSW or the user's independent advisor.

This activity is part of the Local Landcare Coordinators Initiative



Local Land Services

The Local Landcare Coordinators Initiative is funded by the NSW Government, and is supported through the partnership of Local Land Services and Landcare NSW

