

Insurance Coverage for Landcare Groups

what do different insurance products mean for your group?

INCORPORATION & LIABILITY ISSUES

Incorporation creates a legal entity that is separate from the individual members.

Some not-for-profit organisations think that because they have become an incorporated association that they can no longer be sued. This is not the case.

Incorporation provides a certain amount of limited liability for members. It may not, however, protect the organisation or individual directors in cases where negligence can be proven.

WHICH TYPES OF INSURANCE ARE NEEDED?

Some of the insurance detailed in this Fact Sheet will not be applicable to all Landcare organisations. In determining what sort of insurance is needed, each Landcare organisation must consider their risk profile and appetite against what insurance policies can cover and will cost.

Organisations may seek advice and / or alternative quotations from insurance brokers or insurance firms. Make sure comparison is of similar levels of cover, inclusions and excess.

PUBLIC LIABILITY INSURANCE

Public Liability Insurance is an essential insurance for any community organisation to protect the group if it is successfully sued for negligence. The policy is usually combined with product liability insurance.

This fact sheet provides general information about insurance coverage and factors groups should consider. It does not provide specific information about coverage and exclusions offered under the Landcare NSW Insurance Program that has been negotiated by Landcare NSW.

What it covers:

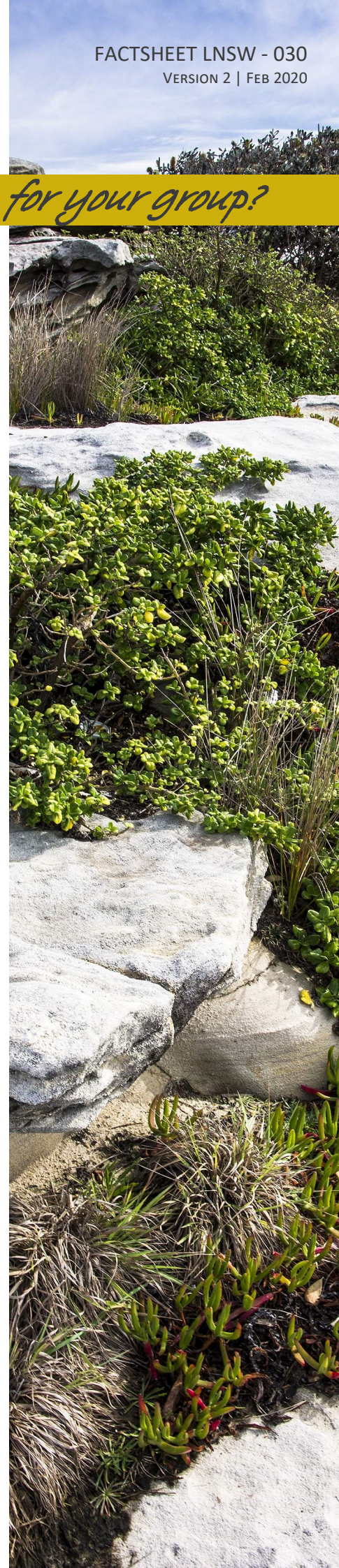
- ✓ Public liability insurance covers a group's legal liability to the general public for bodily injury and property damage caused by a negligent act by the members of your group. It is especially important for field days and events.
- ✓ Insured persons include the Landcare group's Management Committee, full or part time staff, members, volunteers, voluntary workers.
- ✓ Group activities on private and public land.
- ✓ Many policies will have exclusions. It is important you read the policy documents to ascertain what activities are covered, and whether policy extensions for specific activities are required, such as use of herbicides, pesticides, fox shoots, use of watercraft, pest animal baiting, use of chemicals and/or dangerous machinery.
- ✓ Extensions can include "member to member" cover which covers one member suing another.
- ✓ Other extensions can include the hiring out of equipment to other people / groups and the waiver of subrogation rights for members who are also the property owners (subrogation is the right for an insurer to pursue a third party that caused an insurance loss to the insured).
- Limit is usually \$10 to \$20 million for any one occurrence. Most funding bodies require \$20million.
- There can be an excess for this cover e.g. \$250 for each admitted loss for property damage claim.

PRODUCT LIABILITY INSURANCE

Product Liability Insurance is usually combined with Public Liability Insurance.

What it covers:

- ✓ Covers damage and legal costs that are incurred by a maker or seller of a product that injures someone or



damages someone's property.

- ✓ Insured persons include the Landcare group's Management Committee, full or part time staff, members, volunteers, voluntary workers.
- ✓ Covers groups who may produce various promotional products to be sold or handed out to the public.
 - ☛ Product Liability Insurance is particularly relevant if the group sells food or products either as part of the day-to-day activities or as fundraising.
 - ☛ There can be an excess for this cover e.g. \$250 for each admitted loss for property damage claim.

VOLUNTEER PERSONAL ACCIDENT INSURANCE

Also known as Volunteer Workers Insurance or Voluntary Workers Insurance or Personal Accident Insurance.

What it covers:

- ✓ Volunteers, group members and participants for non-recompensable expenses following an accidental injury, disability or death whilst engaged in activities organised by a Landcare group. Benefits are paid on an out-of-pocket basis after other entitlements have been used (e.g. Medicare, private health cover, etc.).
- ✓ This type of insurance would normally cover loss of income if the injured party were unable to work through sickness or injury.
- ✓ There may be an age restriction to the insurance – e.g. only covers those aged 4-85 years. Other policies may stipulate no age restriction but may state that volunteers must be able to take direction.
- ✓ Cover may be extended to include accidents resulting from the use of equipment such as brush cutters, chainsaws, underwater breathing equipment or motorcycles.

- ✓ Cover can also extend to cover volunteers travelling to and from any Landcare group organised event.

- ☛ This cover is not a Worker Compensation Insurance
- ☛ The level of cover is your choice, therefore, examine the benefits and details. Most groups have at least \$10 million worth of cover.
- ☛ There can be an excess for each / every claim for incidental expenses.

WORKERS' COMPENSATION INSURANCE

Landcare Groups and individuals have legal obligations to provide Workers' Compensation Insurance. Groups who are not employing workers do not require Workers' Compensation Insurance. For more information about Worker's Compensation Insurance in NSW visit <http://www.icare.nsw.gov.au/our-services/workers-insurance>

- ✓ Workers' Compensation Insurance is required by law for any Landcare group that employs a worker on any basis, no matter how casual, unless exempt.
- ✓ The term 'worker' includes anyone paid by wages or salary, including piece rates and payment in-kind, it may include contractors in some circumstances.
- ✓ It covers expenses such as wages and medical bills if a person is injured at work.
- ✓ Groups that are participating in volunteer activities that do not employ workers do not require Workers' Compensation Insurance.
 - ☛ Failure to comply with Workers' Compensation requirements means your group may be liable for the full cost of compensation, including common law costs if one or more of your workers is injured.

- ☛ For work undertaken by contractors, sub-contractors, consultants, Landcare groups should ensure that contractors carry the appropriate insurances and retain a copy of the contractor's certificate of currency on hand.

DIRECTORS + OFFICERS LIABILITY INSURANCE

While incorporation does provide some protection to board and committee members it does not prevent individuals from being sued for acts of negligence. A board member may negligently give some wrong advice, request someone to perform a dangerous task or could dismiss staff without proper authority or process.

Where such cases can be proven the personal assets of negligent board and/or committee members can be seized to meet any damages. This is where Directors and Officers Liability Insurance comes in.

What it covers:

- ✓ This insurance covers the decisions made by people involved in managing and running an organisation.
- ✓ Generally, it covers company directors, office bearers, executive officers, senior managers and employees acting in a management capacity.
 - ☛ Generally, under Directors and Officers Insurance, the organisation itself is not covered for wrongful acts. This would generally be covered through the organisation's Public Liability Insurance.
 - ☛ Associations Liability Insurance takes the place of Directors and Officers Liability Insurance and Professional Indemnity Insurance.

PROFESSIONAL INDEMNITY INSURANCE

This insurance is relevant to Landcare groups that employ officers such as Project Officers. Professional Indemnity (PI) insurance protects

against claims made against them by their past or present clients.

Professional Indemnity Insurance covers individuals against claims for breach of "professional duty" arising out of any negligent act, error or omission committed or alleged to have been committed in the conduct of his/her professional activities.

What it covers:

- ✓ Professional Indemnity insurance covers legal defence costs, as well as any damages payable.
- ✓ This insurance generally indemnifies the insured for a claim that is first made while the policy is in force as a result of a breach of professional duty in respect of the conduct of the professional business.
- ✓ Provides protection to member groups, office bearers and employees for claims that arise from any advice given to third parties and members.
 - ☛ Any professional person providing services is regarded by their client as an expert and is therefore open to a claim being made against them.
 - ☛ Does not apply to unincorporated Landcare groups.
 - ☛ Associations Liability Insurance takes the place of Directors and Officers Liability Insurance and Professional Indemnity Insurance.
 - ☛ Cover varies. For most small groups, \$1 million would be most appropriate. For larger groups, consider increasing limit of liability to \$5 million or \$10 million.

PROFESSIONAL INDEMNITY INSURANCE VS. ERRORS AND OMISSIONS

Previously, Professional Indemnity Insurance has been expensive (over \$1000 per year, per individual) however some insurers have developed an Errors and Omissions policy for employees such as Landcare Officers.

Generally speaking, Errors and Omissions policies are usually cheaper than Professional Indemnity policies because Errors and Omissions does not cover financial loss. In other words, an Errors and Omissions policy would cover an officer for breaches of "professional duty" that might cause another party to suffer personal injury or property damage; however it is unlikely to cover any damages payable.

As with all policies, examine the policy's exclusions before in order to determine if the policy fits your organisation's needs.

ASSOCIATION LIABILITY INSURANCE

This is a specific policy for associations, not-for-profit organisations and their committee members and officers. Association Liability Insurance is intended to provide protection for the assets of the individual directors and officers, and to the organisation for defined exposures.

The policy covers you from wrongful activities and advice from your staff. This policy takes the place of 'Directors and Officers Insurance' and 'Professional Indemnity Insurance'.

What it covers:

- ✓ This insurance covers the Landcare group's Directors and Officers for any wrong doing, statutory fines and employment practice liability and fidelity (theft by employees) which may be brought against its members, committee members or officers of the group.
- ✓ Protects the above individuals against losses (including legal

costs) in the course of carrying out their duties on behalf of the group.

- ☛ This insurance usually excludes cover for an individual who commits any deliberately or intentionally dishonest or fraudulent act.
- ☛ Cover varies considerably. For most small groups, \$1 million would be appropriate. For larger groups (e.g. 50-100 members) \$5 million or \$10 million would be appropriate.
- ☛ Only covers groups which are incorporated.

TIPS ON INVESTIGATING POLICIES

When seeking alternative insurance quotes, be sure to compare the same products. Take particular note of limits, excesses and exclusions.

The limit of cover - how much does the policy cover the organisation for?

Excesses - is there an excess on a claim? If so what is the excess? Is the excess on each and every claim?

Exclusions - what is not covered by this policy? It could well be that the exclusions make the policy irrelevant to you.

Be mindful that most policies will only cover your organisation and members when they are acting in authorised activities.

Always make sure that the organisation's insurer is notified of any activities that are undertaken outside of normal operations as it may not be covered or may require an additional premium.

Notifying your insurer is a preferable option to attempting to make a claim and finding out that the organisation is not covered.

DISCLAIMER: The information contained in this publication is based on knowledge and understanding at the time of February 2020. 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.

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Local Land Services

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