



Comparing Unincorporated and Incorporated Associations: Should your association incorporate?

This information sheet details the key differences between incorporated and unincorporated associations, the two most common structures for Landcare Groups and Networks. It also highlights the main features of each and the benefits of choosing incorporation.

Introduction

This information sheet outlines the key differences between incorporated and unincorporated associations, which are the two most common structures used by Landcare Groups and Networks. It also covers the key features of each structure and the benefits of incorporation.

Both incorporated associations and unincorporated associations can:

- engage in non-profit activities;
- seek registration as a charity with the Australian Charities and Not-for-profits Commission (ACNC) - this is discussed in Landcare NSW's "Charity Registration" information sheet; and
- seek endorsement as a deductible gift recipient (DGR) with the Australian Taxation Office (ATO) – this is discussed in Landcare NSW's "Deductible Gift Recipient Endorsement" information sheet.

However, incorporated associations offer greater legal protection to members and committee members and can enter into legal agreements. Schedule A summarises the process for establishing an incorporated association in New South Wales.

What is an unincorporated association?

An unincorporated association is merely a group of individuals with a common purpose. The members of the unincorporated association can be held personally responsible for its debts and liabilities. The unincorporated association has no legal status in its own right, which means that any legal dealings must be in the personal name of members or committee members (or a third party such as Landcare NSW). This means that this structure will ordinarily only be appropriate for Groups and Networks with limited activities and risks, as they will benefit less from having separate legal personality or limiting the exposure of members to debts and liabilities.

What is an incorporated association?

In New South Wales, not-for-profit associations can be incorporated under the [Associations Incorporation Act 2009 \(NSW\) \(Act\)](#) and regulated by NSW Fair Trading.

Incorporation gives the association separate legal status. This means that the members and committee members of an incorporated association are not personally exposed to its debts and liabilities.

As a legal person, the incorporated association can also do the following things in its own name: enter into contracts, employ staff, open a bank account, hold and deal with property and commence (or be subject to) legal proceedings.

For most Groups and Networks, incorporation will be beneficial as it will protect the committee members and members from debts and liabilities. It will also enable them to enter into contracts, employ staff, open a bank account in their own name (rather than in the name of another organisation) and broaden the activities they can engage in. In our view, these advantages usually justify taking on the ongoing administrative burden of being regulated by NSW Fair Trading.

What are the key differences between incorporated associations and unincorporated associations?

The key differences between incorporated associations and unincorporated associations are set out in the table below.

	Incorporated associations in NSW	Unincorporated associations
Governance and regulation		
Regulated by legislation	Yes –the Associations Incorporation Act 2009 (NSW).	No
Regulators	If registered as a charity: ACNC and NSW Fair Trading If not registered as a charity: NSW Fair Trading	If registered as a charity: ACNC If not registered as a charity: No regulator
Governing document	Required to have a constitution, which has the effect of a contract between the association and its members.	Must have a constitution if seeking registration as a charity.
Members	Must have at least five members upon incorporation.	No minimum number of members.
Governing body	Governed by a “committee”. Must have at least three committee members.	Governed by a “committee”. No minimum number of committee members.
Annual reporting obligations	If registered as a charity: Must submit annual financial reports (depending on charity size) and annual information statements to the ACNC. If not registered as a charity: <ul style="list-style-type: none"> If less than \$250,000 in annual revenue and \$500,000 in current assets, must submit annual financial statements to NSW Fair Trading. If more than \$250,000 in annual revenue or \$500,000 in current assets, must submit audited financial statements and auditor reports annually to NSW Fair Trading. 	If registered as a charity: Must submit annual financial reports (depending on charity size) and annual information statements to the ACNC. If not registered as a charity: No annual reporting requirements.

Other characteristics		
Separate legal status	Yes – an association may: <ul style="list-style-type: none"> • enter into and enforce contracts in its own name; • employ staff in its own name; • open a bank account; • hold, acquire and deal with property in its own name; and • commence (or be subject to) legal proceedings. 	No – all contracts and dealings must be in the personal names of members or committee members.
Member liability	Not exposed to an association's debts and liabilities.	Personally exposed to an association's debts and liabilities.
Committee member duties	If registered as a charity: Committee members must comply with the ACNC governance standards and have statutory duties under the Act and fiduciary duties at common law. If not registered as a charity: Committee members have statutory duties under the Act and fiduciary duties at common law.	If registered as a charity: Committee members must comply with the ACNC governance standards and have fiduciary duties at common law. If not registered as a charity: Committee members have fiduciary duties at common law.
Operations	Limited to operating in New South Wales (unless an association has an Australian Registered Business Number, in which case it can operate anywhere in Australia).	No limit on where the association can operate.
Fees	Fair Trading NSW imposes fees, including for registration (\$207) and amending the constitution (\$62).	No fees.
Registrations		
Eligible to have an Australian Business Number	Yes	Yes
Eligible to be a registered charity	Yes	Yes
Eligible for DGR endorsement as an Environmental Organisation	Yes	Yes

Authorisation

This document was prepared by Moores for Landcare NSW Limited on 18 July 2024.

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Contact us

Moores is here to lend a helping hand to Landcare NSW Groups, Networks and members if needed. Should you require any further assistance with choosing the right structure, becoming incorporated, or would like to discuss any part of this information sheet in greater depth, then please feel free to reach out to Moores at nfpassist@moores.com.au or via (03) 9843 2124.