



# Landcare Victoria Inc.

## Rules Review and Update

### Member Discussion Paper

February 2023





## **Landcare Victoria Inc. Rules Review and Update Member Discussion Paper February 2023**

### **1. Foreword**

Landcare Victoria Inc. represents community landcare in Victoria. We support landcare to be strong, connected and effective. We are an influential voice for the Victorian landcare movement, supporting landcare communities to achieve integrated sustainable agriculture and environmental outcomes.

Landcare Victoria Inc supports governance, strategy, advocacy, project development, training and professional development for our landcare networks and groups across the state. We also arrange affordable insurance cover and provide grant and asset management auspice support to our members.

With over 600 member groups, Landcare Victoria Inc is one of the largest environmental volunteer organisations in Victoria, fostering on-ground community led action.

Landcare Victoria Inc.'s Rules (the Rules) and their effective application are at the heart of our organisation. These set out the rights and obligations of members, and the powers and responsibilities of the Management Committee (Board).

As Landcare Victoria Inc. continues to grow and improve support for its members, it is essential that the Rules support our strategic objectives.

The existing Rules, with some amendments, have been in place since the establishment of Landcare Victoria Inc. in May 2018. The Board recognised the need for a review of the rules when it agreed on the Landcare Victoria Inc. 2021-24 Strategic Plan and has now initiated the intended review with the objective of presenting renewed Rules to members at the May 2023 Annual General Meeting.

Operational experience since the establishment of the present rules indicates that the intent and purposes of the existing rules remains generally suitable. However, legal advice indicates that a more substantial change is needed to certain aspects of the Rules particularly concerning matters of risk and liability. In addition, many rules would benefit from improved drafting in the interests of making the Rules clearer .

As the proposed changes to the Rules will in some aspects affect the rights and responsibilities of Members consultation is a necessary and important step in the Rules review process.

This discussion paper focuses on the main issues proposed for change in the Rules review. We hope that Member Groups will take the time to discuss these with their committees and members and provide feedback to guide the formal drafting of the amended Rules.

## 2. Background

The Landcare Victoria Inc Strategic Plan 2021-2025 identified three key goals:

**Goal 1:** A Strong voice for Victorian Landcare

**Goal 2:** A thriving and resilient landcare community

**Goal 3:** A healthy organisation

*A priority action under goal 3 is to review the Rules of the Landcare Victoria Inc to ensure they meet best practice governance requirements and are fit for purpose for today and in the future.*

**The aim of this discussion paper is to outline the proposed amendments and seek landcare community member feedback.**

The Landcare Victoria Inc Committee of Management (Board) and a governance subcommittee have reviewed the rules and sought legal advice on key issues to ensure the updated rules meet best practice governance standards.

The Management Committee/ Board determined the following matters must be retained in the revised Rules.

- Landcare Victoria Inc. must remain a not-for-profit charity
- Landcare Victoria's status as a Registered Environmental Organisation operating a Public Fund must be maintained
- The Management Committee (Board) must remain accountable to the members of Landcare Victoria Inc.
- Any rule changes must support the established capacity to arrange comprehensive and consolidated insurance arrangements for Landcare Victoria Inc. members
- Any rule changes must support the established capacity to auspice grants and other contracts for its unincorporated members.

The current Rules were adopted at the Landcare Victoria Inc AGM on 22 May 2022 [Landcare Victoria Inc Rules of Association 22-05-2022](#)

There are four key areas of focus for the review and update.

1. **The Landcare Victoria Management Committee (Board) and Members Council** - amendments to the rules to reform the composition and method of appointment of the Management Committee/Board and strengthen the role of the Members Council.
2. **The status of unincorporated Member Groups and management of organisational risk associated with these members** – under the current rules, Landcare Victoria Inc. indemnifies unincorporated Member Groups but has very limited powers to manage the risks that arise from providing that indemnity.
3. **Risk Management and Insurance** – In order to properly manage organisational risk associated with the diverse activities of Member Groups new and amended rules are needed to enable Landcare Victoria Inc. to establish policies and procedures that apply to all Member Groups
4. **Membership** – clarification and confirmation of who is eligible to be a member of Landcare Victoria Inc, and their rights and responsibilities

The nature and scale of amendments required means that this review needs to consider all aspects of Landcare Victoria's governance and administration.

The review will also update and modernise the Rules. Details of these amendments are not discussed in this paper as they will have little if any impact on the substantive rights or responsibilities of Association members compared to the current Rules.

We are seeking member consideration and feedback on the four key areas of focus at this stage.

All resulting changes will be available for members to consider prior to the proposed adoption at the Annual General Meeting in May 2023.

### **3. Engagement and Consultation**

The Rules are 'owned' by the Members and while the Management Committee (Board) has a role to recommend change, ultimately Members collectively make the decision about the content of the rules at a general meeting.

The Board wants to ensure that Members are properly engaged and consulted in the development of the revised Rules.

Members will be advised of the rules review with the release of this discussion paper.

- Special Landcare Victoria Inc. bulletin to all member groups with release of the discussion paper (this document)
- Frequently asked questions and supporting documents available on Landcare Victoria Inc's website.

There are three ways to have your say on this discussion paper:

1. Email response to questions posed – [info@landcarevictoria.org.au](mailto:info@landcarevictoria.org.au)
2. Attend LVI community information session to be held online during February 2023
3. Complete an online survey

Informed by Member Group feedback, the Board will arrange for the drafting of a new draft set of rules. These, along with an explanatory memorandum will be circulated in advance of the Annual General Meeting. Member Groups will be entitled to vote on acceptance of the amended Rules at the Annual General Meeting in May.

### **4. Landcare Victoria Inc Board and Members Council.**

#### **Committee of Management (Board)**

Landcare Victoria Inc is the association of community landcare groups in Victoria. The Board's role is to represent all Victorian Landcare Members, and on their behalf promote and protect the interests of Landcare in Victoria.

Landcare Victoria Inc has a Management Committee which is presently referred to as the Board. We have used the term Board in this section as part of the update and propose to formalise use of the term in the updated Rules.

The Board must ensure that the Landcare Victoria Inc operates in accordance with its constitution, Code of Conduct and any relevant legislation. The Board is responsible for strategy, risk, setting policy, driving organisational performance, fiduciary responsibilities, accountability to members and stakeholders, sustainability, advocacy, fundraising, appointment of the CEO.

The Board is responsible for defining how the organisation will achieve its objectives, the organisation's business, its direction and its activities.

In doing this the Board:

- Monitors the management of operations and the affairs of the organisation.
- Ensures that the best interests of the organisation are paramount in all decisions.
- Represents the interests of all members in the governance of the organisation.
- Distinguishes between governing and managing to avoid interfering in operational issues which fall within the duties of the CEO.

The current Management Committee (Board)<sup>1</sup> consists of

- Ten (10) regional representatives elected directly by the Member Groups within their respective allocated catchment region.
- Two (2) professional landcarers elected state-wide by those registered as professional landcarers.
- Up to two (2) persons who may be appointed by the Committee of Management for a term of up to three years, based on their skills and knowledge.

### Members Council

An important element of the governance arrangements of Landcare Victoria Inc. is the Members Council. Supporting the fulfilment of the Board's responsibilities and accountabilities, and representing the interests of all Landcare Victoria Inc. Members, the Members Council plays an important role in advising the Board and CEO about key landcare issues.

The Members Council is a formalised group within Landcare Victoria Inc. established under the current Rules. The Members Council brings together a group of landcarers who are diverse in the roles they fulfil, the on-ground issues they deal with and the personal knowledge and skills they have. Further to this they have the capacity to reach deeply into the broader Landcare membership as required when specific skills or experience is needed on matters of policy and strategy.

The Members Council<sup>2</sup> consists of

- Up to 4 volunteers and one professional member, a total of 50 people, together from each of the 10 Catchment Management Authority regions
- The composition of the Members Council is not in the current rules, however it is detailed in the Members Council Charter [Policies and plans \(landcarevictoria.org.au\)](https://www.landcarevictoria.org.au)

### Proposed Amendments

It is proposed that Landcare Victoria Inc Board will comprise directors selected on merit from among the landcare community and supplemented with additional skills and knowledge as required.

- Directors will be appointed based on a mix of experience and skills as well as diversity including sex, age, culture and locality.
- The Board will comprise a minimum of 6 and maximum of 9 directors appointed to a term of up to three-years. Terms will be staggered to maintain continuity.
- Directors will be appointed on merit ensuring that the Board collectively has all the skills and knowledge required for effective governance of Landcare Victoria Inc.
- The **majority** of the directors will be appointed by the Board following nomination by Member Groups. A minority of the directors will be appointed by the Board on its own nomination.

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<sup>1</sup> Clause 26 – LVI Rules

<sup>2</sup> Clause 39 – LVI Rules

- Director appointments made by the Board during the year would be subject to endorsement by a resolution of the membership at the Annual General Meeting, and failure to obtain that endorsement would result in a Director ceasing to hold office.
- In summary, to be appointed a Director must:
- be nominated by a Member Group (in the majority of cases) or nominated by the Board (in a minority of cases); and
- be approved by the Board selection committee; and
- be appointed by the Board; and
- have their appointment approved by resolution at an AGM.

The process for nomination and selection of the Board Directors will be informed by the consultation of this discussion paper.

The proposed amendments to the Rules will establish the Members Council as the primary representative body for members.

- The amended Rules will require that the Board establish and support a Members Council
- The rules will require the Board to develop a Members Council Charter that will determine details of the operation of the Members Council.
- Members of the Members Council will be appointed by the Board
- The amended Rules will oblige the Board to receive (but not necessarily act on) advice from the Members Council

### **Explanation of Amendment:**

The present method of establishing the Landcare Victoria Inc Board, primarily through election of Directors by Member Groups or by Professional Landcarers, does not ensure that the Board has all the knowledge and skills needed by the organisation. The proposed amendments to the Rules establishes a merit-based Board, on which each director is appointed for their knowledge and skills. This reflects best practice governance, adopted by many not-for-profit organisations of a similar scale to Landcare Victoria Inc.

A strength of the existing Board is that it has a strong connection with grassroots landcare. This strength will be maintained under the amended rules by requiring that a majority of directors be appointed on the nomination of Member Groups. This ensures that at least half the Board will have the explicit support of Member Groups in addition to the knowledge and skills they require.

Professional landcarers will remain eligible for appointment as directors subject to the knowledge and skills they offer.

The existing board is accountable to the wider membership through the election process. Under the proposed amendments, appointments to the Board must be endorsed by members at the next Annual General Meeting. This means that if members believe that an unsuitable person has been appointed, it will be possible to disallow the appointment.

The combination of member nominated directors and the requirement that appointments be endorsed by members means that the Board proposed under the amendments will continue to be strongly connected with and accountable to the landcare community.

The proposed amendments change the nature of the board from one that is explicitly representative to one that is explicitly merit-based. The proposed amendments will ensure that a representative forum is maintained by strengthening the role of the Members Council.

The amended Rules will require that the Board establish and support a Members Council and consider its advice.

In summary, the combination of the Board and Members Council will mean that the governance of Landcare Victoria will have all the skills and knowledge required, will remain strongly connected to community landcare, and will be directly accountable to the members. It will be an improvement on the current system without compromising any important landcare values.

## 5. Unincorporated Member Groups

Approximately half of the 600 landcare group members of Landcare Victoria Inc are incorporated mostly under the *Associations Incorporation Reform Act 2012*, which is administered by Consumer Affairs Victoria. Under the Act, Incorporated Associations must adopt Rules that guide the operation of the group, including financial management and membership. As an incorporated entity, the risks associated with the Member Group's activities rest largely on the shoulders of the Member Group itself.

The remainder of Landcare Victoria Member Groups are unincorporated. These groups are recognised as entities by Landcare Victoria Inc but the Member Group and its management committee are not legally recognised entities.

Two key functions of Landcare Victoria Inc under the current Rules are:

- *To provide an overarching legal structure, through which Member Groups can operate their local branches with efficiency.*
- *To provide services and support to groups including but not limited to incorporation, insurance and management matters.*

Unincorporated Member Groups often seek the support of Landcare Victoria to auspice grant applications and funding agreements, and other services and activities normally accessible only to incorporated entities. These are examples of the operation of the 'overarching legal structure'<sup>3</sup> referred to in the present Rules.

Under the present Rules<sup>4</sup>, provided some limited conditions are met, Landcare Victoria accepts responsibility for liabilities incurred by unincorporated Member Groups. The indemnity provided under the existing Rules is not limited to activities that fall within the scope of the Landcare Victoria insurance coverage. Note that this indemnity does not extend to incorporated Member Groups.

At present, the operations of unincorporated Landcare groups are guided by the Landcare Victoria Inc rules<sup>5</sup> 'in so far as they apply'. This unclear rule provides member groups with little practical guidance on their group's operation.

### Proposed Amendments:

It is proposed to amend the Rules to better manage the operations of unincorporated Member Groups by including new rules:

- That provide the Landcare Victoria Board power to issue reasonable directions concerning the activities of unincorporated Member Groups
- That specifically and more clearly guide the operations of unincorporated Member Groups.

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<sup>3</sup> Clause 2.2 LVI rules

<sup>4</sup> Clause 17 LVI rules

<sup>5</sup> Clause 17.3

## **Explanation of Amendments**

The Rules currently provide an insufficient basis for Landcare Victoria Inc. to manage risks associated with acceptance of the liabilities of unincorporated Member Groups. For example, Landcare Victoria Inc does not have any power to direct an unincorporated Member Group to cease activities that fall outside our insurance coverage or otherwise create risks to Landcare Victoria Inc. A large uninsured damages claim arising from the activities of an unincorporated Member Group could bankrupt Landcare Victoria Inc. Legal advice received is that this requires urgent remedy to protect the interests of the wider Association.

The current Rules are not drafted in a way that is useful to unincorporated Member Groups so the notion that they can be used 'in so far as they apply' is not very helpful to either Landcare Victoria or the relevant Member Groups. The proposed amendments will include a clearer set of rules for unincorporated Member Groups that will specifically apply to them.

Some unincorporated Member Groups may prefer to maintain operational independence. The option of becoming incorporated is available for them.

Landcare Victoria intends to continue to support the operations of existing unincorporated Member Groups but has considered whether in future only incorporated entities should be admitted as members. Member feedback on this issue would be welcome.

## **6. Risk Management and Insurance**

One of the great strengths of landcare is that groups independently pursue their priorities in a movement that is united under the landcare name. As the State association, Landcare Victoria exists to support but not direct the operations of its Member Groups.

At present, the Rules provide for limited ability of the Landcare Victoria Board to establish binding processes and policies that would support the operations of its Member Groups. .

The insurance coverage Landcare Victoria Inc organises for its members provides very cost-effective access to a wide range of insurances. This is not presently supported by any policy framework that help to avoid or mitigate harms. It is not appropriate to rely only on insurance as a means of risk management.

Many groups and networks, often with the support of Catchment Management Authorities have developed and follow very well-developed policies that help to ensure that their operations are safe, effective and conducted in a way that protects the reputation of the landcare brand. However, this standard is not universally and consistently achieved, and some Member Groups may not be adequately managing risks associated with their operations. A significant failure on the part of one Member Group could create reputational risks for landcare more widely and could cause a significant increase in insurance costs that are ultimately shared by all Member Groups.

Currently, member groups can join Landcare Victoria Inc provided they hold an equivalent level of insurance<sup>6</sup> to that established by Landcare Victoria Inc. The administrative burden of determining whether a member group's insurance is in fact 'equivalent' is substantial. In practice, few groups have explored this option and presently there are no members that have decided against participating in Landcare Victoria's insurance arrangements.

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<sup>6</sup> Clause 6.1 LVI rules

### **Proposed Amendments:**

It is proposed to amend the Rules to empower Landcare Victoria Inc. to help ensure that the risks created by the activities of Member Groups are effectively managed. The proposed amendments would empower the Landcare Victoria Board to establish at its discretion, binding policies for topics including:

- Workplace Health and Safety
- Governance
- Human Resource Management
- Financial management
- Grant management
- Insurance and risk management
- Environmental Laws compliance

The existing power to establish a mandatory Code of Conduct and Child Safety Policy will be clarified and retained.

The existing power to require the provision of membership details and statistical and financial information to Landcare Victoria to enable the proper administration of the Association will also be retained.

It is proposed that the amended Rules will require the Board to consult with the Members Council prior to adoption of new or amended policies that bind Member Groups (unless an urgent need arises). This will help to 'ground truth' the impact of any new policy to be adopted.

It is proposed that Membership will be conditional upon participation in the Landcare Victoria insurance scheme. The option of independently obtaining 'equivalent' insurance cover will no longer be permitted.

### **Explanation of Amendments**

The proposed amendments will expand the power of the Landcare Victoria Inc. Board to better support Victorian landcare by establishment of minimum operational and governance standards. The approach is intended to support, rather than control Member Groups and the feasibility of proposals will be tested through consultation with the Members Council in addition to any other consultation arrangement the Board might pursue.

Landcare Victoria Inc recognises that there may be variations necessary in policies to accommodate aspects that are specific to a particular Member Group, and that flexibility is required. Where a variation or alternative policy approach is thought necessary, this can be submitted to the Board for approval. It is anticipated that in establishing policies, Landcare Victoria Inc would provide templates, guidance and as required, training that supports widespread adoption.

## **7. Membership**

Membership of Landcare Victoria Inc gives your group access to Landcare Victoria Inc's services and contributes to the strong foundation community landcare needs to grow and thrive in Victoria.

Landcare Victoria Inc. will presently accept as full members any not-for-profit group with at least five members, with purposes similar to Landcare Victoria Inc.

The current Rules do not, legally speaking, clearly or consistently define who are Landcare Victoria Inc's members and their rights and responsibilities. Landcare Victoria Inc has a membership based on groups, yet the Rules make reference to individual, professional and associate members of Landcare Victoria Inc.

The Rules presently allow for admission of Associate (non-voting) Members but the criteria for admission are highly restrictive. Landcare Victoria does not presently recognise any Associate Members.

### **Proposed Amendment**

It is proposed that the Rules are amended:

- To make clear that ordinary (voting) members of Landcare Victoria comprise only landcare groups and similar entities.
- To continue to provide for Associate membership (non-voting), with the Board having the power to admit corporate entities and individual persons (including Landcare Professionals) at its discretion.

### **Explanation of Amendment**

The proposals relating to limiting ordinary membership to landcare and related groups reflects established practice. The amendments will aim to eliminate some ambiguous language in the current Rules. Member Group votes will continue to be exercised by a person nominated by the Member Group, but those people are not a Member of Landcare Victoria Inc. in their own right.

The participation of individual people and families as landcare volunteers remains essential and highly valued by Landcare Victoria. The most appropriate way for them to participate is through their membership of a Landcare Victoria Member Group.

The amendments proposed relating to Associate Membership allows the Board discretion to admit individual persons or corporate entities who have a desire to support Landcare Victoria or whose membership might otherwise be a benefit to Landcare Victoria. As these Members would not have a right to vote at general meetings, it is considered appropriate to allow the Board discretion over who may be admitted to this class of membership.