

# Our Legal Structure and Its Future

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Our club is an incorporated society, operating under the 1908 Incorporated Societies Act of 1908. This act was “replaced “by the Incorporated Societies Act 2022. This Act took effect on 5 October 2023.

All new organisations wishing to become incorporated, now register under the 2022 act. Existing incorporated societies, such as ours can continue under the old act until April 2026. At the end of the period, if the club has not registered or delisted its self, the it will cease to be incorporated.

Many clubs such as ours are incorporated societies and will need to re-register or decide to become unincorporated. Some clubs are not incorporated, although there is the option to become so. Likewise, we too could decide to become a loose association of like-minded people.

Either way, the decision to remain incorporated or to be unincorporated needs to be passed by members at an AGM or a Special AGM. It is not a decision for the committee to make.

## **Not incorporated**

If the club is not incorporated then the members are free to do whatever they like when compared to an incorporated. It is up to the members as to how the organisation is run. Generally speaking, the club will have a committee with a president, secretary, and treasurer. The club many or may not have:

- A constitution, stating why the club exists and how the club will be run
- Legal protection unless it has limited liability insurance (which is possible)
- Tax exception status

The club will have a bank account, which may hang off an individual' account, be a separate account although as the club lacks legal status, this may be difficult to arrange.

## **Incorporated society**

The act requires a constitution which guides the club in its objective and activities. It is up the club to write it to meet the requirements of the law.

In addition to the constitution, the act:

- Provides a distinct legal identity similar to a company, making it easier for example to open a bank account. More importantly it means that individual members of the club cannot be held personally liable for the club's liabilities or debts.
- It also means that the club qualifies for tax exemptions.

### **Incorporated under the new act**

Our club's constitution meets many of the requirements of the new act. Indeed, much of what was in the old act is also in the new act, admittedly more rigorously defined.

For example:

- We have more than 10 members
- Our financial reporting to the club can continue. We are will under the \$50,000 threshold requiring a change to the way we do things.
- You consent to be a member when you pay your subs. If you fail to pay, then you cease to be a member
- We hold an AGM
- We have a committee to run the club (ability assisted by out of committee members)

The main addition to the constitution is likely to be a Conflicts of Interest Register for the committee. This records actual, perceived, or potential conflicts of interest.

### **Comment**

As our club already has a constitution. But before we go much further, X and Y have offered to investigate the situation. Remember, only members at an AGM or at a Special AGM can make the decision to remain incorporated or to be unincorporated. The committee can only make recommendations.

I'll keep you posted.

ZZZ

President

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Note

- 1) **A Summary** of the key changes can be found here: <https://is-register.companiesoffice.govt.nz/law-changes-for-societies/key-changes/>
- 2) **Resources:** There are several organisation providing information about the new Incorporated Societies Act 2022 including:
  - [The Institute of Directors' not-for-profit governance hub](#)
  - [Community Governance Aotearoa](#)
  - [Parry Field Lawyers' information hub](#)
- 3) The NZ specific book on not-for-profit governance as in oversight can be found here: [Getting to Grips with Not-For-Profit Governance](#)