



## LEGAL MATTERS

### Legal Entities For Organisations

At some point most community organisations will formalise their structure by becoming a legal entity.

The most common forms are either an Incorporated Society or a Trust.

In deciding which entity is right for your organisation there are a number of questions to work through.

The [Companies Office website](#) has good information about the differences between incorporated societies and charitable trusts.

[This guide from Community Law](#) can help you work through the options.

It is important for Boards and Committees to understand the requirements placed on them by the legal structure they are operating under.

### Incorporated Societies

An important feature of an Incorporated Society is that it must have a minimum of 15 members. It is accountable to those members and must meet obligations set out in the Incorporated Societies Act.

Each Incorporated Society must have a Constitution, which are the rules that describe how the organisation will be run. A Constitution is required to have certain clauses including, a description of who can be a member, who can vote, and what the powers of its governance body are.

Incorporated Societies are registered with the Companies Office. They are required to file a number of documents with the Registrar of Incorporated Societies.

Some must be filed every year, e.g. the annual financial statement. (If you are a registered charity your Charities Services return will suffice.) Other documents are only required to be filed as changes happen (for example, when the society's addresses, officers or rules change).

You can find out more about running an Incorporated Society [here](#).



# RULES

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### Trusts

The key feature of any trust is that the people appointed to be the legal owners of the trust's property (the "trustees") have a special duty to hold and manage that property for the benefit of others. The Trust Deed will outline who will benefit (the 'beneficiaries') from the organisation's stated charitable purpose. Although the trustees are the legal owners of the property, their duty to the beneficiaries means the beneficiaries still have a legally recognised interest in the property.

A Trust Deed is needed to create a trust. This records the key information about the trust: it identifies the trust property, appoints the trustees, and identifies the beneficiaries or the relevant charitable purpose. A Trust can seek to become a Charitable Trust Board by registering under The Charitable Trusts Act 1957. This allows the trustees of a trust to become an incorporated body, in a similar way to an Incorporated Society.

Trusts are also obliged to notify the Registrar of any rule changes or change of contact details.

### Charities + Charitable Status

Being an Incorporated Society or Trust does not automatically make an organisation a registered charity. To obtain charitable status an organisation has to register with [Charities Services](#).

Charitable status recognises a community group that exists for charitable purposes and exempts it from paying tax on the income it earns. Other benefits of charitable status include being able to apply for funding from sources that only fund registered charities and being eligible for donee status.

Registered Charities must meet certain obligations in order to retain their charitable status, including providing an annual return to Charities Services. This involves providing non-financial and financial information in the form of an annual report, which must comply with Charities' reporting standards. The level of information you are required to provide is determined by which of four tiers your organisation falls into. Most Neighbourhood Support groups are in Tier 3 or 4. (More information about financial reporting can be found in the Finance and Funding section of this toolkit.)

Registered Charities must notify Charities Services of any changes to their organisation, such as a change in their rules, officers or address. This information, along with that provided in their annual return, is made publicly available on the Charities Register.



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### Legislative Compliance

There are a number of laws that Boards/Committees need to comply with.

[This resource](#) from Sports NZ provides a great summary.

### Health + Safety

One of the newer pieces of legislation that organisations need to be aware of is the Health and Safety at Work Act, 2015. The Act places duties on organisations, officers (mainly board members and chief executives), workers and other people in the workplace to take steps to ensure health and safety.

The key thing for Neighbourhood Support organisations to think about are their workplaces and any events they organise. They must be aware of their duties and the risks associated with what they do, ensure there are good systems in place to manage those risks, and ensure those systems are monitored and reviewed regularly. Organisations and individuals can be prosecuted if they breach the Act. Substantial fines and imprisonment can be imposed. There are limits on the ability to insure against liability.

Some important things for Neighbourhood Support Boards/Committees to think about are:

- Have you identified the health and safety risks for your volunteers and employees? (Some common workplace risks are tripping hazards, faulty electronic equipment, vehicle safety, working on your own in the community and working at night.)
- Do you have procedures in place to manage these risks?
- Do you ensure that there are risk assessments carried out for any events that you run?

Resources and information are available on the [WorkSafe website](#) Sports NZ also has a good resource on the [Risk Management of Events](#).

“Safety is something that happens between your ears, not something you hold in your hands.” Jeff Cooper