

Guidance for charitable trusts



April 2025

This document has been created in partnership with Gibson Sheat Lawyers

With recent changes to the incorporated societies environment, some organisations are reviewing their legal structure. In the sport and recreation sector, the most common legal structures are incorporated societies and charitable trusts.

This guidance note will help you understand what a charitable trust is and whether it might be the right structure for your organisation. In some cases, you may be an incorporated society that would be better suited to a charitable trust structure.

Please consider your individual circumstances and seek legal advice if needed. We also recommend speaking with your national sport or recreation organisation to see if they can offer any additional guidance or have any specific requirements for maintaining membership with them.

What is a charitable trust?

A charitable trust is a legal structure, distinct from an incorporated society, company, partnership or other type of legal structure. It is a way to hold and protect assets for charitable purposes, with governance and management directed by trustees in accordance with a trust deed.

Common examples of charitable trusts in the sport and sector include:

- regional sports trusts
- trusts managing sport and recreation facilities
- trusts promoting amateur sport as the means to achieve a charitable purpose (e.g. providing sports sessions to primary schools or creating participation opportunities for people with disabilities).

The key difference between a charitable trust and an incorporated society is governance. Control sits with the trustees of a charitable trust. An incorporated society is governed by a democratic process controlled by its membership.

Is a charitable trust the right structure for your organisation?

If your organisation is considering a charitable trust structure, consider the following questions:

What is the organisation's primary purpose, and is it charitable?

Charitable purposes are:

- the relief of poverty
- the advancement of education

- the advancement of religion
- any other matter beneficial to the community.

It is necessary to state and be able to demonstrate that the benefit is for the public or a wide section of the public.

The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose is pursued (section 5(2A), Charities Act 2005). Supporting high performance or elite sportspeople is not charitable.

Providing facilities for recreation in the interests of social welfare and there is a public benefit may also qualify as charitable (section 61, Charitable Trusts Act 1957). "In the interests of social welfare" means the facilities are provided with the purpose of improving the lives of the people who use them, and either: people have a need for the facilities due to their 'youth, age, infirmity, disablement, poverty, race, occupation or social or economic circumstances'; or the facilities are available to the public.

How is your organisation currently run at a governance level and does this structure work for you?

A charitable trust requires at least one trustee (but having at least three is recommended).

Control of the governance and management of a charitable trust is in the hands of a few trustees rather than a wider membership. Sometimes the same trustees can remain involved over several years which may have a negative effect on the organisation. Your trust deed can limit the term of office served by trustees to ensure you have effective rotation at a governance level.

An incorporated society must have a committee of at least three committee members.

Does your organisation have an active membership that wishes to participate in democratic processes?

Members don't have any rights in relation to the governance or management of a charitable trust (as compared to an incorporated society which is controlled by its members). In fact, most charitable trusts do not provide for any members at all because the trustees are required to operate the trust in accordance with the trust deed and their trustee duties. However, people may be members of a charitable trust (often called "supporters" or "friends") so they can show their support to the trust by paying a fee and receiving email communications or invitations to events.

By contrast, an incorporated society is a membership-based organisation where members participate in decision-making through the constitution. An incorporated society must have at least 10 members. If your organisation values member participation in governance, an incorporated society may be a better fit.

What laws apply to charitable trusts?

[Charitable Trusts Act 1957](#)

Trustees can incorporate as a charitable trust board under the Charitable Trusts Act meaning the board itself is a separate legal entity, however it is not compulsory.

The advantage of incorporating as a board is that the trust, not the trustees, enters into obligations, and the trust, not the trustees personally, will be liable if a default of those obligations occurs. Trustees must act to the high standards that the law requires of trustees, whether or not the trust is incorporated as a board.

[Trusts Act 2019](#)

The Trusts Act sets out the mandatory and default duties of trustees.

Trustees have several mandatory duties that they must follow and cannot be modified or excluded by the terms of the trust. The mandatory duties are:

- duty to know the terms of the trust
- duty to act in accordance with the terms of the trust
- duty to act honestly and in good faith
- duty to act for the benefit of beneficiaries or to further permitted purpose of the trust
- duty to exercise powers for a proper purpose.

Default duties apply to trustees unless they are modified or excluded by the trust deed. Briefly the default duties are:

- duty of care
- duty to invest prudently
- duty not to exercise powers for personal benefit
- duty to consider actively and regularly whether to exercise powers
- duty not to bind or commit trustees to a future exercise of discretion
- duty to avoid conflicts of interest
- duty of impartiality
- duty not to profit
- duty to act for no reward
- duty to act unanimously.

[Charities Act 2005](#)

If a charitable trust registers as a charity, it will be subject to the Charities Act. Registration is voluntary, but it provides benefits including income tax exemption, donee status (donors do not have to pay tax on donations), access to funding from organisations which only fund registered charities, and public accountability (your details made publicly available to help promote public confidence in the charitable sector).

Registered charities are subject to ongoing compliance, financial reporting and governance review requirements.

More resources

- Charities Services have produced a [helpful article](#) which compares incorporated societies and charitable trusts.
- Sport NZ [guidance on the pros and cons to being incorporated](#).