

Pros and cons to being incorporated



Incorporated Societies Act

Sport NZ – Incorporated societies, unincorporated groups, or a hybrid arrangement?

This document has been created in partnership with Gibson Sheat Lawyers

Needing to re-register under the new Incorporated Societies Act 2022 (**Inc Soc Act**) throws up questions about the benefits of being incorporated. This note discusses the advantages and disadvantages of an incorporated society vs an unincorporated group. A third option is also possible – a hybrid arrangement – where a previously incorporated society could cease to be incorporated and, by agreement with a larger incorporated entity, become a committee or special interest group within that larger entity.

You should consider your individual circumstances and seek legal advice where appropriate.

We recommend you speak with your NSO (where applicable) in the first instance, to discuss what is best for your organisation.

Incorporated societies

Incorporated societies will need to re-register under the Inc Soc Act by March 2026 to retain their incorporated status. The table below sets out the advantages and disadvantages of being an incorporated society.

Advantages	Disadvantages
<ul style="list-style-type: none">• Separate legal entity with perpetual existence• Able to own property and enter into contracts in its own name• Members are not personally liable for the society's debts• Constitution must meet minimum requirements under the Inc Soc Act – including rules around decision-making, member meetings, committee members and disputes• Can apply for funding from funding agencies• Access for members to enforcement and remedies under the Inc Soc Act	<ul style="list-style-type: none">• Time and cost of becoming incorporated or re-registering under the Inc Soc Act• Ongoing compliance, financial reporting and other obligations under the Inc Soc Act

Unincorporated groups

Some groups may choose to remain unincorporated or to let their incorporated status lapse by not re-registering under the Inc Soc Act by March 2026.

An unincorporated group should consider the following question on a regular basis, and whether there is any change in circumstances or the nature or scale which would warrant incorporation:

- How long is the group intending to exist? If the group has been formed for a particular reason e.g. to organise an event or to address an urgent-short term issue, and it is only going to exist for a short time, there may be a case for being an unincorporated group.
- Is the group intending to seek funding from funding agencies? Certain funding agencies require applicants to be incorporated or to be affiliated to a legal entity. Each funding agency has different criteria, so check the ones you wish to apply to.
- Does the group own any significant property or equipment or handle significant sums of money? Unincorporated groups can't own assets in their own name, so any property or equipment would

- be owned by individuals.
- What is the scale of operations, and what is the risk involved in the activities undertaken by the group?
- Will volunteers be less likely to be involved if the group is unincorporated because they see a risk of possible personal liability?

The table below sets out the advantages and disadvantages of being an unincorporated group.

Advantages	Disadvantages
<ul style="list-style-type: none"> • No need to go through the incorporation or re-registration process under the Inc Soc Act • Fewer legal obligations – no need to file annual returns or financial statements under the Inc Soc Act (but must still comply with laws applying to the group’s activities) • Flexible operating structure, no obligation to have rules 	<ul style="list-style-type: none"> • No separate legal entity, meaning cannot own property or enter into contracts in the group’s own name • Members can be held personally liable for the group’s debts – committee members more likely to be held personally responsible for the group’s debts, especially if they knew the debt/obligation was being incurred or signed documents or agreed to the transaction • Funding opportunities may be more limited, certain funding agencies require applicants to be incorporated or to be affiliated to a legal entity • No requirement to have rules or a constitution to govern how the group operates – can be problematic in decision making and when disputes arise • Enforcement by third parties is against members individually • Difficult to set up bank accounts • Uncertain membership status – even if there are rules, there can be difficulties dealing with disputes as to whether people are bound by the rules • No separate regulatory regime for access to enforcement / remedies – group members left to pursue issues through general law and courts

Hybrid arrangement

A hybrid arrangement is a third possibility – where a previously incorporated society ceases to be incorporated and becomes a committee or special interest group within a larger incorporated entity.

You should consider if the operations of the society or group could be undertaken as a committee that sits within a larger parent entity. For example, the society might be in charge of running competitions and being an intermediate communication point between clubs and the national body. If they could, the next question to ask is whether the larger entity would be prepared to take on the responsibility for the committee, as well as the potential risks to the entire organisation if the committee acts improperly or outside the internal rules/policies that guide the operation of the committee?

With proper controls, this hybrid arrangement can deliver the benefits of an incorporated and unincorporated model. It can remove much of the cost and time of compliance at this level and still enable good control over its operations with the benefit of being part of an incorporated larger entity.

If you are a RSO or Club and think this could be an option for the future of what your entity does, you should communicate with a parent organisation and see if they will also consider it. If you are a parent body (an NSO or RSO), consider how this might assist your effectiveness if you could strengthen your connection with these organisations and offer them real support and a structure to ensure the work that they currently undertake can continue without a lot of the downsides of compliance.

More resources

<http://communitytoolkit.org.nz/choosing-the-right-legal-structure-for-your-group/unincorporated-groups/>

<https://betterboards.net/nz/non-profit-fact-sheets/unincorporated-societies-new-zealand/>