
Memo

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To: Julie Hood (Sport New Zealand)

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Impact of COVID-19 on the ability of sports organisations to hold AGMs and comply with relevant statutory obligations

1. Sports organisations are facing significant issues as a result of New Zealand's move to Alert Level 4 in response to the COVID-19 pandemic. Specifically, you have told us that many sports organisations are due to hold annual general meetings (**AGMs**) in the near future, and are concerned that they will be unable to meet the requirements of their organisations' constitutions, as well as various related statutory obligations.
2. You have asked us to provide guidance to sports organisations on:
 - (a) the effect of the COVID-19 situation on AGMs that are scheduled to take place during the Alert Level 4 lockdown period;
 - (b) how organisations should proceed in respect of those planned AGMs; and
 - (c) the likely impact of any delays in holding AGMs on organisations' statutory reporting obligations.

Requirement for sports organisations to hold AGMs

3. Not-for-profit organisations such as societies and charities are required to hold regular meetings of their members. Many of those meetings are scheduled to take place around this time of the year, due to the end of the financial year (which is usually 31 March).
4. Specific requirements applying to organisations are set out in each organisation's constitution. Generally, an organisation's constitution will provide:
 - (a) that the organisation must hold an annual meeting at a certain time of year; and
 - (b) the minimum number of people that must be present at the meeting, in order to constitute a quorum.
5. For example, the constitution of Badminton New Zealand requires an AGM to be held "*once every year at such time, date and place as the Board determines but not more than six months after the end of the financial year.*" The constitution requires a quorum of "*30% of the Member Associations who are entitled to vote.*"

6. A range of issues are generally considered, and voted upon, at AGMs. Such issues might include electing board members to any vacant positions, the presentation of a budget and annual plan for the organisation, and, importantly in this context, considering and approving financial statements for the previous year.

Statutory obligations

7. Sports organisations that are incorporated societies or charities are subject to a range of statutory obligations relating to filing of financial statements and annual returns.
8. Incorporated societies are subject to the Incorporated Societies Act 1908. Section 23 of that Act requires societies to file an annual financial statement with the Registrar, before a deadline determined by the Registrar. The Registrar's website indicates that the deadline for filing such statements is the end of the month following the month in which a society's AGM is held (so, for example, if a society holds its AGM in March, it must file its annual financial statement with the Registrar by 30 April).
9. Registered charities are subject to the Charities Act 2005. Section 41 of that Act requires charities to file annual returns, financial statements and/or performance reports (with the exact filing requirements dependent on the size of the charity). The deadline for filing is six months from the individual charity's balance date.

The impact of Alert Level 4 on organisations' ability to hold AGMs and file financial statements

10. On 24 March the Prime Minister, with the agreement of the Minister of Health, issued an epidemic notice under section 5 of the Epidemic Preparedness Act 2006. This allows the use of special powers by Medical Officers of Health in accordance with section 70 of the Health Act 1956 for the purposes of preventing the outbreak and spread of Covid-19.
11. On 25 March, the Director-General of Health, acting as the national Medical Officer of Health, made an order (pursuant to section 70(1)(m) of the Health Act) that:
 - (a) required all premises within New Zealand to be closed, until further notice (with some exceptions, including premises that are "*used solely as a private dwellinghouse*" and premises "*necessary for the performance or delivery of essential businesses*"); and
 - (b) forbade, until further notice, people congregating in "*outdoor places of amusement or recreation of any kind or description (whether public or private)*".
12. This order has the effect of preventing physical meetings of the kind that would usually be required for an organisation's AGM. As a result, some sports organisations have expressed concern that they may breach both:
 - (a) the requirements of their organisation's constitution, because they will be unable to hold an AGM within the timeframe required in their constitution; and

- (b) their statutory obligations to file financial statements and other reports with the relevant regulator, because the filing of such statements and reports is reliant on them being confirmed at an AGM.

How to proceed in respect of AGMs that are scheduled to take place within the Alert Level 4 lockdown period

13. Organisations must not, under any circumstances, hold an AGM in person at the present time.
14. Organisations should first consider whether their constitution permits members to take part in an AGM via alternative means – this could include an online meeting or teleconference. If a meeting of this sort is permitted, organisations should pursue that option. If decisions can be made by postal vote, that should occur.
15. If none of these options are available, we recommend that organisations, in the first instance, postpone their AGM. Given that at the present time it is very difficult to know in-person AGMs will be able to take place, we recommend that organisations wait until the COVID-19 situation changes before setting a new date.
16. In the event that a sports organisation has to postpone its formal AGM, that organisation could nevertheless think about alternative means for creating a forum in which members can discuss relevant issues. For example, organisations could facilitate informal discussions via phone or online methods.
17. Postponing an AGM may mean that sports organisations breach both the requirements of their constitutions and their statutory obligations. However, organisations should take comfort from the views that have been expressed by the relevant regulators on this subject. Charities Services has issued the following guidance:
 - (a) *“...while charities are generally required to follow their rules, we won’t take compliance action against charities that are taking practical steps to prevent the spread of COVID-19. You must prioritise taking steps to minimise social contact, even if this breaches your rules on how you should carry out your AGM or meeting.”*
 - (b) In respect of filing annual returns: *“If your charity’s annual return is due shortly, but COVID-19 means you won’t be able to file your documents on time, you can ask for an extension. To do this, please email info@charities.govt.nz and let us know how much extra time you need. We won’t be taking action on any late returns during the lockdown period, but we encourage you to get in touch with us if you can.”*
18. The Registrar of Incorporated Societies has stated that *“If circumstances related to COVID-19 are affecting your ability to respond to our deadlines, please be assured that we will not take any action to remove entities from our registers or take any enforcement action for non-compliance with filing during these times.”*
19. It appears that sports organisations do not need to be concerned about enforcement action by the regulator at this time. The regulators’ guidance supports sports organisations taking a pragmatic,

practical approach to these issues, in what is an unprecedented situation. We recommend that sports organisations affected by the current situation contact either Charities Services or the Registrar (as appropriate), in order to notify them of the situation and, if appropriate, formally request an extension to their filing deadline. We understand that both regulators are operational and contactable at this time.

The future

20. Looking to the future, all sports organisations should be looking to review their constitutions to ensure that they are able to adapt their normal processes to deal with unusual circumstances such as the one currently before us.
21. We recommend, for example, that all organisations consider amending their constitutions to allow their board (or equivalent) to authorise AGMs to be held via alternative means (such as using audio/visual and/or other electronic technology). Organisations should also consider whether the required meeting quorum should be able to be reduced in such circumstances.

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