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**Sport New Zealand Group**

# **Legislative Compliance Manual**

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For the sport and recreation sector

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## Introduction

Effective governance of sport and recreation organisations requires all individuals in governance positions in those organisations (referred to in the Guide as "governors") to have a good understanding of the legal environment in which the organisation operates and the duties and legal obligations that apply to them.

This Legislative Compliance Guide (Guide) provides an overview of the key legislation that may impact sport and recreation organisations and those who govern them. Its purpose is to provide you, as a governor of such an organisation, with an overview of your key obligations and responsibilities under that legislation.

This Guide also covers Sport New Zealand national policies that your organisation must comply with under your Relationship Agreement with Sport New Zealand (if you have such an Agreement in place).

For each piece of legislation (or national policy), this Guide sets out:

- a brief summary of relevant parts of the legislation (or national policy); and
- a description of what the legislation/policy means for you, and, at a high level, what you need to do to comply with it.

This Guide has been written in plain English to make it easier for you to understand, and comply with, your obligations. It describes your obligations in general terms and is not intended to be legal advice. If you need more information about your obligations, you should refer to the relevant legislation or policy. If you are unsure about any compliance matter, please consult with a legal advisor.

Also, please note that references to "you" are to the governors of each sport and recreation organisation. This Guide is current as at [insert date].

### *This guide covers:*

- Health and Safety at Work Act 2015
- Privacy Act 2020
- Children's Act 2014
- Sports Anti-Doping Act 2006 (covered under the heading "Integrity in Sport")
- Integrity Sport and Recreation Act 2023 (covered under the heading "Integrity in Sport")
- Crimes Act 1961 (match fixing and corruption) (covered under the heading "Integrity in Sport")
- Human Rights Act 1993
- Employment Relations Act 2000
- Trusts Act 2019
- Incorporated Societies Act 1908/2022

- Companies Act 1993
- Charities Act 2005
- Sport New Zealand national policies:
  - o National Policy for Gender Equity in Governance

There are, of course, many other pieces of legislation that could be relevant to your organisation. For example, in the employment space, other important legislation includes the Holidays Act 2003, Minimum Wage Act 1983, and the Protected Disclosures (Protection of Whistleblowers) Act 2022. In addition, not every piece of legislation referred to in this Guide will be applicable to your organisation. For example, the Trusts Act will only be relevant to organisations that either are a trust or have a trust. This Guide is intended to be a summary of key legislation only and is not a complete description of all of your legal obligations. Please seek legal advice as needed.

## Part 1: General legal requirements

### 1. Health and safety

#### Governing statute

#### **Health and Safety at Work Act 2015**

- 1.1 The Health and Safety at Work Act 2015 provides the core legal framework for health and safety of workers and other people at the workplace. It focuses on protecting workers and other people against harm to their health, safety and wellbeing by eliminating or minimising risks at work.
- 1.2 Various regulations sit underneath the Act that deal with specific topics such as asbestos, hazardous substances and adventure activities. The most relevant regulations for you are the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016. There are also various approved codes of practice and guidance on WorkSafe's website.
- 1.3 The Act sets out the principles, duties and rights in relation to workplace health and safety. The primary duty-holder under the HSWA is a "Person Conducting a Business or Undertaking" (**PCBU**). Most organisations covered by this Guide will generally be PCBUs under the Act, noting that there are some exceptions to this, including for volunteer associations.<sup>1</sup>
- 1.4 The PCBU has the primary duty to ensure, as far as reasonably practicable,
  - (a) the health and safety of its workers while at work, and of workers whose activities in carrying out work are influenced or directed it, while the workers are carrying out that work; and
  - (b) that other people's health and safety is not put at risk from work carried out as part of the conduct of the business or undertaking. This is a very broad obligation, and includes members of the public, for example.
- 1.5 The definition of "workers" includes employees, contractors and subcontractors (and their employees), apprentices, trainees, persons gaining work experience, students, and volunteer workers. Workers also have duties under the Act.
- 1.6 The Act also places a due diligence obligation on officers (such as board members, directors and executives of the PCBU) to ensure that the PCBU complies with its duties and obligations under the Act.
- 1.7 The Act requires PCBUs to actively engage with its workers (except for volunteer workers) by providing them with health and safety information, allowing reasonable opportunity for them

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<sup>1</sup> A 'volunteer association' is not a PCBU for the purposes of the Act. A 'volunteer association' means a group of volunteers (whether incorporated or unincorporated) working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

to express their views, taking their views into account and involving them in decision making on health and safety matters.

- 1.8 The Act requires PCBUs to notify WorkSafe as soon as possible after becoming aware of a 'notifiable event', which is defined in the Act. The Act requires serious work-related events to be notified including (but not limited to):
- (a) the death of a person;
  - (b) an injury or illness that requires, or would usually require, a person to be admitted to a hospital for immediate treatment; or
  - (c) an unplanned incident that exposes a worker to a serious risk to their health and safety arising from an electric shock, fall from height or collapse of a structure).
- 1.9 Organisations and individuals can be prosecuted if they breach the Act. Substantial fines and imprisonment can be imposed.
- 1.10 The Act prohibits insurance policies or contracts that seek to indemnify individuals of their liability to pay fines or infringement fees under the Act.

***What does this mean for sport and recreation organisations?***

- 1.11 You must comply with all the requirements and obligations relating to the Act and any associated regulations, safe work instruments, industry guidelines, codes of practice and standards.
- 1.12 The Act places duties on your organisation, officers (primarily board members and chief executives), workers, and other people in the workplace to take steps to ensure health and safety.
- 1.13 As a PCBU, your primary duty is to ensure, as far as reasonably practicable, the health and safety of your workers while at work and other people at the workplace. It is important to remember that this duty extends beyond your own workers to all workers whose activities you influence or direct (including volunteers), and also to all those who could be put at risk by the activities of the organisation, such as athletes, visitors, and the public.
- 1.14 The primary duty of care is a broad and overarching duty that includes, but is not limited to, having effective practices in place for providing and maintaining a safe work environment, providing adequate facilities for the welfare of workers, providing and maintaining safe systems of work and providing any information, training, instruction or supervision necessary to protect all persons from risks to their health and safety arising out of the organisation's work. This includes having systems, processes, and policies in place to:
- (a) proactively identify, assess and manage any potential hazards or risks in the workplace (including hazards that may cause psychological harm, such as bullying); and
  - (b) accurately record, notify and manage accidents that caused harm or that may have caused harm if they meet certain thresholds.

- 1.15 Sport and recreation organisations should familiarise themselves with any [regulations](#), [safe work instruments](#), [industry guidance](#), [codes of practice and standards](#) that apply to their workplace. WorkSafe also provide helpful guidance, including in relation to [the HSWA](#), [engaging volunteers](#), [risk and workplace management \(part 1\)](#) and [\(part 2\), worker engagement, participation and representation](#). Further guidance can be found at [Worksafe New Zealand](#).
- 1.16 Officers of a PCBU must exercise 'due diligence' to ensure their organisation complies with the Act. That is, they must be aware of their duties and the risks associated with the organisation, ensure there are good systems in place to manage those risks, and ensure those systems are monitored and reviewed regularly. While volunteer officers have a duty to exercise due diligence, they cannot be prosecuted under the Act for failing to meet their officer duties.
- 1.17 Where a serious injury, illness, or incident happens, you should consider whether it needs to notify WorkSafe.

## 2. Privacy

### Governing statute

#### **Privacy Act 2020**

- 2.1 This Act, and the 13 information privacy principles (**IPPs**) in the Act, are designed to ensure that there are adequate safeguards over the way that sport and recreation organisations, collect, use, store and disclose personal information.
- 2.2 The Act establishes requirements around how you must deal with personal information, and sets out processes for individuals to request their personal information and make complaints about how you have dealt with their personal information. The Act also requires you to notify the Privacy Commissioner and affected individuals if a "notifiable privacy breach" occurs.
- 2.3 The Privacy Act (and the Health Information Privacy Code) apply only to information about identifiable individuals. It does not apply to anonymised or statistical information that individuals cannot be identified from, nor to companies, partnerships or other "non-individuals".

#### **Health Information Privacy Code 2020**

- 2.4 The Health Information Privacy Code (**HIPC**) applies the IPPs to the health sector, establishing 13 rules that govern the collection, use, storage, and disclosure of health information.

#### **What does this mean for your sport and recreation organisation?**

- 2.5 You will hold personal information about a range of individuals – for example, your employees and members. In some situations, you might also hold health information about individuals.

- 2.6 You have obligations under the Privacy Act (and possibly the HIPC, eg if your organisation holds information about athletes' health or disabilities) in respect of that personal/health information.
- 2.7 In particular, you are responsible for the actions of your staff and volunteers (see section 12 of the Act), and need to train them in their responsibilities under the Privacy Act and the HIPC. If you engage any contractors, you need to ensure that they are aware of their obligations to manage personal/health information in accordance with privacy legislation.
- 2.8 You must ensure that you appoint a privacy officer (see section 201 of the Act), who will (among other things):
- (a) ensure that the organisation complies with the requirements of the Privacy Act; and
  - (b) deal with any requests made to the organisation under the Privacy Act.
- 2.9 When collecting personal (or health) information about an individual, you must (usually) ensure that the information is collected directly from the individual concerned. You should make sure that individuals are told why the information is being collected – ie, what you will be doing with the information. In order to facilitate this, you should ensure that operational procedures (eg, the design and use of your forms) are appropriate. For example, if you ask individuals to provide personal/health information via a form, you should ensure that the form includes a privacy statement that sets out why you are collecting the information and how it will be used (among other things). The Privacy Commissioner provides a [free privacy statement generator](#) that you can use.
- 2.10 In general, once you have collected personal (or health) information, you can:
- (a) only use that information for one of the purposes that you collected it for (which you should have told individuals about when you collected their information); and
  - (b) not disclose that information beyond your organisation.
- 2.11 There are exceptions to the above general statements, which are set out in privacy principles 10 and 11 (and the corresponding HIPC rules).
- 2.12 You must take steps to ensure that the personal/health information that you hold is stored appropriately. This includes ensuring that the information is stored securely and is only accessed by people who need to have access. You should:
- (a) have clear rules about which of your staff/volunteers may access personal/health information, and ensure that those staff/volunteers understand their responsibilities in relation to handling that information;
  - (b) put in place appropriate security measures to protect information held digitally – for example, making sure that software is kept updated, and that staff/volunteers who no longer work with your organisation do not continue to have access to IT systems;
  - (c) ensure that building security prevents unauthorised access to information.



- 2.13 You should also make sure that you carefully consider, on a regular basis, whether you need to continue to hold the personal/health information that is in your systems. If you do not have a good reason for holding the information (for example, because an individual is no longer a member of the organisation), that information should be deleted.
- 2.14 If you receive requests from individuals for their personal (or health) information (or requests for such information to be corrected), you must deal with that request in accordance with the Privacy Act (and, if applicable, the HIPC). In particular, you must:
- (a) check the identity of the requester;
  - (b) respond to the request within 20 working days;
  - (c) either provide/correct the information, as requested, or give the individual reasons for refusing the request (importantly, the reasons for which you may refuse a request are limited – these are set out in sections 49 to 53 of the Privacy Act);
  - (d) if you believe that the information requested is held by another agency, you must transfer the request to that agency and inform the requester that you have done so;
  - (e) if the request is not granted in full, you must inform the requester that they have a right to complain to the Privacy Commissioner about that decision.
- 2.15 You must not charge any individual for providing access to, or correcting, that individual's personal information.
- 2.16 If a privacy breach occurs, you will need to carefully consider next steps. Your privacy officer should be involved in these conversations. In particular, if a "notifiable privacy breach" (defined in section 112 of the Privacy Act) occurs, you will be required to notify the Privacy Commissioner and affected individuals.

### **3. Children's Act - Safety checks**

#### **Governing statute**

#### **Children's Act 2014**

- 3.1 This Act requires "specified organisations" to ensure that safety checks are carried out of people employed or engaged by the organisation who are "children's workers".
- 3.2 Sport and recreation organisations will be specified organisations under the Act if they are funded by Sport New Zealand (or any other State service) to provide "regulated services". "Regulated services" include:
- (a) out-of-school care and recreational services;
  - (b) services provided at a registered school;
  - (c) *"services provided at community facilities, including (but not limited to) sports and recreation centres, libraries, swimming pools, galleries, and community centres";*

- (d) "education services, including (but not limited to) learn-to-swim programmes and digital literacy programmes";
  - (e) "services provided in public environments, including (but not limited to) surf and beach patrols, skate park guardians, and road safety co-ordinators".
- 3.3 Under the Act, specified organisations are required to conduct **safety checks** of all people that they employ or engage who are "children's workers" under the Act.
- 3.4 A children's worker is a person who works in, or provides, a regulated service, and:
- (a) their work involves regular or overnight contact with a child or children; and
  - (b) that work takes place without a parent or guardian of the child, or of each child, being present.
- 3.5 Generally speaking, if your organisation is a specified organisation, and someone in your organisation (who is not a volunteer) currently works with, or may in the future work with, children under the age of 18 (without a parent or guardian present), they may need to be safety checked.
- 3.6 Under the Act there are two categories of children's workers: core children's workers and non-core children's workers. Core workers are those whose work requires the person to regularly work alone with, or to have primary responsibility over, children.
- 3.7 The safety checking requirements do not apply to volunteers (unless the volunteering is part of an educational or vocational training course).

**What does this mean for your sport and recreation organisation?**

- 3.8 If your organisation is a specified organisation, you must:
- (a) not employ or engage a person as a children's worker without ensuring that a safety check of the person that complies with the Children's Act has been completed;
  - (b) ensure that all of your existing children's workers have passed a worker safety check;
  - (c) ensure that each children's worker that you employ or engage is safety checked at least every three years; and
  - (d) make sure that you do not employ anyone to be a core children's worker who has been convicted of certain offences specified in Schedule 2 of the Act (for example, indecent assault).
- 3.9 You may conduct your own worker safety checks or engage a third party to provide this service.
- 3.10 The Act requires each safety check of a person to be carried out in accordance with the requirements of the Children's (Requirements for Safety Checks of Children's Workers) Regulations 2015. At a high level, the checks involve a careful process of information gathering and assessment that includes confirming identity, interviews, checking referees

and considering risk (ie, it goes beyond a criminal history check). For further information see Child protection | Sport New Zealand - Ihi Aotearoa (sportnz.org.nz).

#### 4. Integrity in sport

*Note that, at the time of writing, neither the new Integrity Sport and Recreation Act, nor the Code/Rules that will be made under the Act, had come into effect. It is anticipated that further guidance on what sport and recreation organisations need to comply with will be released at a future date. Ideally this page should be updated once the Act comes into force and further guidance is released.*

##### Governing statute

##### **Integrity Sport and Recreation Act 2023**

- 4.1 The Integrity Sport and Recreation Act 2023 aims to enhance integrity within sport and physical recreation and promote the safety and well-being of participants and the fairness of competition. The Act will come into force no later than 1 July 2024.
- 4.2 Threats to integrity are broadly defined in the Act, and include competition manipulation (including sports betting), corruption and fraud, use of prohibited substances (doping), abuse, bullying, violence, harassment, intimidation, and racism and other forms of discrimination. Acknowledging that integrity issues occur at all levels of sport and physical recreation, the ambit of the Sport and Recreation Integrity Commission will include grassroots and community sport and physical recreation, as well as elite sport.

##### *Sport and Recreation Integrity Commission*

- 4.3 The Act establishes a new independent body – the Integrity Sport and Recreation Commission (the **Commission**). Among other functions, the Commission will become New Zealand’s national anti-doping organisation and will consolidate the integrity functions from the Sports Anti-Doping Act 2006 within it.
- 4.4 A key function of the Commission will be to provide education, support and guidance to sport and physical recreation organisations to strengthen and protect the integrity of New Zealand’s sport and recreation sector.

##### *Integrity codes*

- 4.5 The Commission will establish a Code of Integrity for Sport and Recreation (**Code**). An additional integrity code can be made if the Commission chooses.
- 4.6 The Code will set standards of conduct, policies and procedures for dealing with integrity issues and investigations, and complaint and dispute resolution services. However, sport and physical recreation organisations will still be responsible for managing and resolving integrity issues in an appropriate way.
- 4.7 Sport and recreation organisations can choose whether to adopt the Code. However, once adopted, the Code will bind the organisation and any athletes, participants and members of

the organisation, or other people who agree to the application of the Code (e.g. board members, directors and officers).

#### *Anti-Doping rules*

- 4.8 Separate to the matters covered in the Code, the Commission must also make anti-doping rules to implement the World Anti-Doping Code (this is currently the responsibility of Drug Free Sport NZ (**DFSNZ**) but will move to the Commission when DFSNZ is disestablished). Adoption of the rules are voluntary, but strongly encouraged.
- 4.9 The Commission can also make any anti-doping rules that are necessary to achieve its functions, rules that set sanctions relating to the anti-doping rules, and rules to compel individuals or organisations to co-operate with an investigation and provide information or documents to the Commission when investigating a breach of anti-doping rules.
- 4.10 The Sports Anti-Doping Rules 2024 (**2024 Rules**) are existing anti-doping rules made under the Sports Anti-Doping Act 2006. The 2024 Rules will remain in force under the Integrity Sport and Recreation Act. There are 11 rule violations under the 2024 Rules. Relevant to NSOs, the 2024 Rules cover matters such as:
- (a) **sanctions against individuals (i.e. athletes), athletes teams, and NSOs:** where any NSO fails, without reasonable excuse to comply with any direction or request made under the 2024 Rules, the Commission may report such failure to the CE of Sport NZ.
  - (b) **NSO Anti-Doping Tribunal:** Instead of referring matters to the Sports Tribunal, a NSO may establish and nominate a NSO Anti-Doping Tribunal to hear anti-doping rule violations brought by the Commission provided that the NSO Anti-Doping Tribunal complies with all the requirements of the 2024 Rules.
- 4.11 It is intended that NSOs will agree to the 2024 Rules and any additional anti-doping rules created under the new Act, so that the rules apply to their athletes, their teams, coaches, athlete support personnel or other persons (including board members, directors and officers) as a condition of participation or involvement in sport.

#### *Powers, investigations, and disciplinary panels*

- 4.12 The Commission will be able to conduct investigations into integrity matters (which is widely defined), and may refer breaches of codes and rules to a Disciplinary Panel or the Sports Tribunal to determine if there has been a breach, and any sanctions to be imposed. The Sports Tribunal is an independent body that determines disputes for the sports sector on matters such as anti-doping violations, and appeals against decisions of NSOs (such as decisions to not select an athlete for a New Zealand team).
- 4.13 The Code may also prescribe means of holding organisations (or a participant or other person) that adopt the Code accountable for breaches of an integrity code, including by requiring them to take steps to change their policies or to pay compensation.

### **Governing statute**

#### **Sports Anti-Doping Act 2006**

- 4.14 The Sports Anti-Doping Act provides the current legislative framework to implement the World Anti-Doping Code in New Zealand. This Act will be heavily amended by the Integrity Sport and Recreation Act. In particular:
- (a) the name of the Sports Anti-Doping Act will be changed to the Sports Tribunal Act 2006;
  - (b) DFSNZ will be disestablished and incorporated into the Commission;
  - (c) DFSNZ's anti-doping functions and rulemaking powers will be transferred to the Commission;
  - (d) the integrity functions that currently sit within Sport New Zealand will also transfer to the Commission along with the Sport and Recreation Complaints and Mediation Service (an independent complaints and mediation service which is free and available to everyone involved in sport and recreation).
- 4.15 The primary function of the amended Sports Tribunal Act will be to set out the functions, processes, and powers of the Sports Tribunal.

***What does this mean for your sport and recreation organisation?***

- 4.16 You must comply with the Sports Anti-Doping Act until the Integrity Sport and Recreation Act comes into force. You should begin preparing for any policy and procedural changes necessary to comply with the Integrity Sport and Recreation Act when it comes into force. This will include:
- (a) familiarising yourself with, and determining whether to adopt the Code and any new anti-doping rules once they are created;
  - (b) updating your integrity standards, procedures and policies to comply with the Code if you adopt it;
  - (c) regularly reviewing your policies and procedures to ensure you are meeting the requirements of the Integrity Sport and Recreation Act, Code, and anti-doping rules as applicable.
- 4.17 If you do adopt the Code and anti-doping rules/2024 Rules, you must:
- (a) promote a culture of clean sport and encourage athletes to compete drug free;
  - (b) ensure that your organisation, athletes and participants, and other persons comply with the Code, all anti-doping rules and additional rules at events, competitions and activities you organise;
  - (c) notify the Commission of any conduct you become aware of that may breach the Code or rules;
  - (d) promptly report any information, documentation or materials suggesting or relating to a potential anti-doping violation to the Commission;

- (e) take all reasonable steps to assist and co-operate with any investigation conducted by the Commission into a rules violation or Code breach;
- (f) take all necessary steps to comply with and uphold sanctions imposed against a member of your organisation, or an athlete or participant or other person that receives a sanction in relation to an activity or event held by your organisation.

4.18 Even if you do not adopt the Code or anti-doping rules/2024 Rules, the Commission may still investigate any threat to integrity, and you must comply with such an investigation by providing documents or information that the Commission may require. "Treat to integrity" is defined in the Act.

## **Governing statute**

### **Crimes Act 1961**

4.19 The Crimes Act 1961 covers bribery and fraud offences (including match-fixing).

4.20 **Corruption and bribery of officials:** It is an offence for anyone to corruptly give or offer (or agree to give or offer) any "bribe" to any person with the intention of influencing an "official" in respect of any act or omission by that person in their official capacity.

- (a) "Official" means any person in service of the Crown, including employees of central and local government and members of local authorities or public bodies.
- (b) "Bribe" means any money, valuable consideration, office, employment, or any benefit (whether direct or indirect).

4.21 **Trading in influence:** It is also an offence to corruptly accept or obtain (or agree to accept or obtain) a bribe for a person, with the intention of influencing an official in respect of any act or omission by that person in their official capacity.

4.22 Both of these offences carry a maximum prison sentence of seven years.

4.23 **Fraud and deception:** It is an offence to obtain by deception or cause loss by deception. A person will be guilty of obtaining by deception or causing loss by deception if they, by any deception and without any right:

- (a) directly or indirectly obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration or other privilege or pecuniary advantage;
- (b) incur any debt or liability or obtain any credit;
- (c) induce or cause any other person to make, accept, alter, destroy, etc any document or thing capable of being used to derive a pecuniary advantage; or
- (d) cause loss to any other person.

4.24 **Match-fixing:** The Act specifically provides that the offence of obtaining by deception (or causing loss by deception) includes any act or omission done to manipulate the overall result of (or any event within) a "sporting activity" with the intent to influence a betting outcome of

that activity. "Sporting activity" in this context includes sporting competitions, games, matches, races, and rallies involving human participants.

- 4.25 The punishment for obtaining by deception or causing loss by deception depends on the amount of the value obtained or loss caused, with maximum prison sentences ranging from 3 months to seven years.
- 4.26 **False statements by promoters:** It is an offence to make or publish any false statement in respect of any body (incorporated or incorporated) with the intent of deceiving or causing loss to any person or inducing any person to entrust or advance any property to any other person. This offence has a maximum prison sentence of 10 years.

**What does this mean for your sport and recreation organisation?**

- 4.27 Your organisation must comply with its legal obligations, including those under the Crimes Act. If it does not, penalties may be imposed under the criminal law. Your organisation may also face consequences under other legislation as well as reputational damage if staff, volunteers, or athletes commit such an offence.
- 4.28 If your organisation fails to comply with its legal obligations, including those described in this guide, this may have implications for the funding that you receive from Sport NZ and/or could result in the termination of your relationship or investment agreement with Sport NZ (if applicable).
- 4.29 Sport NZ expects your organisation to have an anti-corruption and match-fixing policy. Sport NZ has templates of these policies designed to be used by organisations available on their website – see the [Anti-Corruption Policy](#) and [Match-fixing Policy](#) pages on Sport NZ's website.
- 4.30 Your organisation is also expected to comply with the New Zealand Policy on Sports Match-Fixing and Related Corruption (**Match-fixing Policy**). Sports that receive investment from Sport NZ or High Performance Sport NZ are required to comply with the Match-fixing Policy. In order to comply with the Match-fixing Policy, sport and recreation organisations will be required to have the match-fixing prevention measures specified in Sections 8 to 12 of the Match-fixing Policy at a level that is appropriate for each code, taking into account the nature of your organisation and its existing constitutional documents. These measures must include match-fixing rules, education, support/protection measures, and strong sports betting agreements (where appropriate).

## 5. Human rights and discrimination

### Governing statute

#### **Human Rights Act 1993**

- 5.1 The Human Rights Act 1993 aims to protect human rights in New Zealand by prohibiting discrimination on the grounds of sex (including pregnancy and childbirth), marital or family status, religious or ethical belief, colour or race, ethnic or national origins, disability (including illness), age, political opinion, employment status, being affected by family violence, and sexual orientation.
- 5.2 The Act expressly applies to discrimination in employment, including job advertisements, application forms, interviews and job offers. It also applies to unpaid workers (i.e. volunteers) and independent contractors. Under the Act, organisations are considered to be the “employer” of the volunteers. It is unlawful under the Act to ask questions of (or about) a job applicant or volunteer that indicate an intention to discriminate on any of the above grounds.
- 5.3 An employer is liable for anything done or omitted by an employee, even if they did not know it was being done. In such cases, the employer will be treated as if the employer and the employee breached the Act. An employer would need to prove that it took such steps as were reasonable and practicable to prevent the employee from doing that act.
- 5.4 Indirect discrimination is also prohibited. This includes behaviour that appears neutral and not discriminatory but has the effect of discriminating in an unlawful way, and a good reason for the behaviour or practice cannot be established.
- 5.5 Racial and sexual harassment are also prohibited under the Act as is conduct which is intended to incite racial disharmony (which includes using words that are threatening, abusive, or likely to create hostility or contempt). An individual may complain of discrimination or sexual or racial harassment under either, but not both of the:
  - (a) Human Rights Act 1993, by making a complaint to the Human Rights Commission; or
  - (b) Employment Relations Act 2000, by going to mediation and/or raising a personal grievance under that Act.
- 5.6 No person can be victimised for making a complaint of discrimination or harassment.
- 5.7 There are exceptions in the Act that legally allow employers to treat employees or volunteers differently on a prohibited ground. For example, it can be lawful to discriminate based on disability if an employee or volunteer requires special services or facilities, and it is not reasonable for the organisation or employer to provide them. Similarly, it might be allowable to discriminate based on sex (gender) in competitive sports if the strength, stamina or build of competitors is relevant. However, exceptions to unlawful discrimination will not apply if only some aspects of the duties of the role fall within an exception, and it would not unreasonably disrupt the employer's business for the employer to give those duties to another employee or volunteer.



- 5.8 The government and other public bodies can also discriminate if the particular policy or practice is done in good faith to assist a group that has been disadvantaged by discrimination.

**What does this mean for your sport and recreation organisation?**

- 5.9 You must ensure that the decisions of your organisation and employees/volunteers of your organisation do not unlawfully discriminate in a manner that breaches the Human Rights Act. Given that you and your organisation are liable for actions of your employees, you should have policies and procedures in place that prohibit discrimination in the workplace so that it is evident that you have taken steps to prevent discrimination in the workplace.
- 5.10 You must ensure that your organisation's policies and procedures (whether written/formal or unwritten/informal) do not expressly or indirectly result in unlawful discrimination on any of the above grounds, and that instead they promote compliance with all the laws prohibiting discrimination.
- 5.11 A robust anti-discrimination and anti-harassment policy should:
- (a) state that there is zero tolerance for any form of bullying, harassment and discrimination, and provide relevant examples such as spectators verbally abusing participants from the opposition;
  - (b) clearly specify who the policy applies to (e.g. employees, volunteers, coaches, players, spectators, and umpires and other officials);
  - (c) state the consequence of any breach (e.g. spectators may be asked to leave the sports ground or, if an individual's conduct breaches the Human Rights Act, that they may be referred to the police or relevant authorities); and
  - (d) provide a clear, formal procedure (or a link to a process or procedure) for employees and volunteers to complain (and for your organisation to deal with such complaints) about discrimination and inappropriate conduct. The complaints process should also include avenues for mediation and/or legal redress, if appropriate.
- 5.12 It is recommended that you conduct regular reviews of your policies and procedures to ensure they are not discriminatory. If you believe that you need to employ or recruit someone based on characteristics like age, gender, ethnicity etc, you must ensure that you have legitimate grounds for an exception. You can check this by contacting the Human Rights Commission directly.
- 5.13 You must ensure that you treat job applicants and employees and volunteers equally in relation to all employment and volunteering matters. Specifically, you or someone appearing to act on behalf of your organisation, must not discriminate on any of the prohibited grounds when:
- (a) asking enquiries of job applicants or volunteers;
  - (b) not employing a job applicant or not selecting a volunteer;

- (c) giving less favourable terms of employment (including transfers, training and promotion) to, or subjecting to a disadvantage, a job applicant, employee or volunteer;
- (d) terminating employment; or
- (e) dismissing an employee or volunteer or causing an employee or volunteer to retire or resign.

5.14 You have an obligation to investigate all complaints of sexual or racial harassment, and you cannot victimise any person for making such a complaint. If you are satisfied that sexual harassment has occurred, you must take any reasonably practicable steps to prevent a recurrence of the behaviour.

## **6. Employment**

### **Governing statute**

#### ***Employment Relations Act 2000***

- 6.1 The Employment Relations Act 2000 is the primary legislation that governs the relationship between employers and employees. The Act is not applicable to individuals that are not employees, such as unpaid workers (i.e. volunteers) and independent contractors.
- 6.2 The Act requires parties to an employment relationship (such as employers and employees, employers and unions) to deal with each other "in good faith". The duty of good faith is very wide in scope. It requires both parties to be active and constructive in establishing and maintaining a productive employment relationship in which they are, among other things, responsive and communicative. If an employer proposes to make a change or decision that is, or is likely to, have an adverse effect on the continuation of an employee's employment (such as restructuring, disciplinary processes), it must provide the affected employees with:
- (a) information relevant to that decision; and
  - (b) an opportunity to comment on the information before the decision is made.
- 6.3 Failure to comply with the duty of good faith may give rise to a claim resulting in penalties, or a personal grievance claim.
- 6.4 The Act enables employees to raise personal grievances against their current or former employer under specific grounds including unjustified dismissal, unjustified disadvantage, discrimination and sexual harassment.
- 6.5 Personal grievances must be raised with the employer within 90 days of the date that the employer's action occurred or came to the employee's notice, whichever is later. Employees have 12 months (instead of 90 days) to raise a personal grievance for sexual harassment. Personal grievances can be raised outside these timeframes if exceptional circumstances exist.
- 6.6 Unjustified dismissal and unjustified disadvantage are the most common personal grievances. The question of whether a dismissal or an action is justifiable is whether the

employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time. This means acting in good faith, having a good reason (substantive justification) and following a fair process (procedural justification).

6.7 If an employee has a personal grievance, the employer may be liable for a range of remedies including compensation, lost wages, costs, and reinstatement.

6.8 The Act also covers a wide range of employment matters, including:

(a) **Employment agreements:** Employment agreements must contain the mandatory clauses prescribed by the Act, including work hours, the place of work, a job description, information about wages or salary, an explanation of dispute resolution procedures, and an employee protection provision which sets out the process that is followed when an employee's work is sold, transferred or contracted out.

The Act also sets out specific requirements for certain clauses that are not mandatory but may be included in an employment agreement. This includes clauses relating to fixed term employment, trial and probationary periods, shift cancellation, an employee's availability to accept additional hours of work, and secondary employment.

(b) **Fixed term employment:** There are special requirements for fixed-term employment. Employers can only offer fixed-term employment if there is a genuine reason to do so based on reasonable grounds (for example, if there is a short-term project such as a one-off sporting event or where the employee is filling in for a permanent employee on leave). The employee must be made aware of this reason. If the reasons and details of the fixed-term employment are not included in the written employment agreement, then the employee may legally be considered a permanent employee.

(c) **Trial periods:** The Act allows employers to use trial periods. A valid trial period enables employers to dismiss new employees within their first 90 days of employment and prevents the employee from bringing a personal grievance or legal proceedings in respect of the dismissal. For the trial period to be valid, the employment agreement must specify that there is a trial period, that the trial period starts at the beginning of the employee's employment, the length of the trial period (no more than 90 calendar days), the trial period end date, advise that the employee may be dismissed during the trial period, and advise that if the employee is dismissed during the trial period they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal. In addition, the employee must not have previously been employed by the employer.

(d) **Record keeping:** Employers must keep accurate records of wages, time, leave, and other information. Failure to do so can result in penalties and other legal consequences.

(e) **Procedures and institutions for the resolution of employment issues:** The Act sets out the process for the resolution of employment relationship problems, including

personal grievances. Mediation is typically the first step if an employee raises a personal grievance. If the grievance remains unresolved, it may progress to the Employment Relations Authority and then (potentially) the Employment Court.

- (f) **Flexible working arrangements:** Employees are entitled to request changes to their work hours, work days, and place of work. Employees are also entitled to request a short-term flexible working arrangement if they are affected by family violence. Formal requests must be made a certain way, must be responded to within certain timeframes, and can only be refused for certain reasons.
- (g) **Discrimination:** The Act (together with the Human Rights Act 1993) prohibits discrimination against employees on prohibited grounds of discrimination (e.g. sex, ethnic or national origin). The Act specifically prohibits terminating employment, offering less favourable terms of employment (such as working conditions, benefits, promotion opportunities) to an employee, or causing an employee to retire or resign based on a prohibited ground of discrimination, or union membership or activities. There are certain exceptions where an employer may be justified in treating an employee differently on the grounds of discrimination.
- (h) **Racial and sexual harassment:** The Act defines racial and sexual harassment. Employers can be held liable if they or their representative (such as manager) engage in sexual or racial harassment. An employer may also be liable if they fail to investigate a complaint about a colleague, customer or client engaging in sexual or racial harassment, or if they fail to take reasonably practicable steps to prevent repetition.
- (i) **Industrial relations:** The Act deals with various rights and obligations on employers and unions. These relate to matters such as collective bargaining between unions and employers, union access to the workplace and strikes and lockouts.
- (j) **Various other entitlements:** including rest and meal breaks and breastfeeding facilities and breaks.

### **What does this mean for your sport and recreation organisation?**

6.9 You must deal with the employees of your organisation in good faith in all aspects of the employment relationship. Importantly, where a proposed change or decision may affect employees' employment, your organisation must follow a fair and reasonable process that complies with the minimum standards of good faith. Specifically, before a decision is made, the sport and recreation organisation must:

- (a) put the proposed change or concerns to the affected employees;
- (b) give employees a reasonable time to respond, comment, and suggest other options; and
- (c) genuinely consider and take into account the responses before making any final decisions.

- 6.10 In addition to the overarching duty of good faith, your organisation must meet other employment obligations, for example, it should:
- (a) ensure that employment agreements contain all the mandatory clauses and comply with the Act;
  - (b) have a copy of each employee's signed employment agreement (or terms and conditions of employment);
  - (c) maintain accurate records and systems to demonstrate compliance with minimum employment obligations for at least six years, including records of employees' hours worked, wages, and leave taken;
  - (d) follow a fair and reasonable process for any disciplinary, performance, redundancy or other employment processes, and ensure the outcome is reasonable and proportionate in the circumstances;
  - (e) investigate any allegations or complaints against employees, customers or clients regarding sexual or racial harassment, and if satisfied the behaviour took place, take practicable steps to prevent any repetition of the behaviour;
  - (f) ensure that formal requests for flexible working are responded to in accordance with the process set out in the Act.
- 6.11 A sport and recreation organisation should ensure that its managers, people leaders and human resources staff familiarise themselves with the organisation's employment obligations under the Act (and other employment legislation). It is best practice to seek advice from a lawyer or employment relations specialist before making decisions that may negatively affect an employee's ongoing employment, especially dismissal. Sport and recreation organisations may also wish to consider putting in place policies and procedures that address common employment matters to ensure compliance with legislation.

## Part 2: Corporate form requirements

Whether the law described in this Part is applicable to your sport and recreation organisation will depend on the type of organisation that you are. Make sure that you refer only to the legislation that relates to the corporate form of your organisation.

### 7. Trusts

#### **Governing statute**

#### **Trusts Act 2019**

- 7.1 There are several types of trust, including private trusts and registered charitable trusts. The key feature of any trust is that 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 (either the people or classes of people named in the trust deed, or the section of the community who will benefit from a specific charitable purpose stated in the trust deed).
- 7.2 A trust is controlled by trustees, who have authority over all matters relating to the trust. The Trusts Act sets out the duties of all trustees. These duties guide what is required of you as a trustee, particularly in making decisions. The Act separates trustee duties into two types:
- (a) "mandatory duties" – these duties can't be changed by the terms of the trust;
  - (b) "default duties" – these duties must be performed by the trustees unless they are expressly changed by the words in your trust deed.
- 7.3 The Act provides that a trustee will be held personally liable for any breach of trust that arises as a result of a trustee's dishonesty, wilful misconduct, or gross negligence. No indemnity for such actions can be included within a trust deed (and if the deed contains any such indemnity, that clause will be deemed invalid).

#### **What does this mean for your sport and recreation organisation?**

- 7.4 Some sport and recreation organisations have trusts that own assets and capital funds. Others are registered charitable trusts. If you are a trustee of a trust, you will need to comply with the key duties and obligations set out in this Act. In particular, as a trustee, you must:
- (a) Comply with your mandatory duties. This means that you need to:
    - (i) know the terms of the trust – this means what is set out in the trust deed or other trust documents, or matters that are implied in those documents;
    - (ii) act in accordance with the terms of the trust;
    - (iii) act honestly and in good faith;
    - (iv) act for the benefit of beneficiaries, or to further a permitted purpose (such as a charitable purpose if the trust is a charitable trust); and

- (v) exercise your powers as a trustee for a proper purpose (ie, one of the purposes that the powers were given to you for);
- (b) comply with the default duties in the Act, unless those duties have been expressly modified or excluded by the trust deed;
- (c) keep certain records (such as the trust deed, variations to the trust deed, records of trust property, written records of trustee decisions, and accounting records). If you stop being a trustee, you must pass those documents on to at least one continuing or replacement trustee; and
- (d) unless the trust is a charitable trust, notify every beneficiary of certain basic trust information and to provide additional information (if requested by a beneficiary) unless you and the other trustees of the trust reasonably consider that the information should not be disclosed (after taking into account certain factors set out in the Act).

## 8. Incorporated societies

### Governing statute

#### ***Incorporated Societies Act 2022***

- 8.1 The 2022 Act was recently enacted and governs how incorporated societies operate. It follows a long-awaited update to the previous Act, with some significant changes. As at the date of writing (2024), many Incorporated Societies are still operating under the old Incorporated Societies Act 1908, but those societies will need to re-register under the new Act by April 2026.
- 8.2 The Incorporated Societies Act enables the incorporation of groups of people associated for 'non-pecuniary' purposes (societies), and governs their formation, operation and winding up. It includes details on the content of societies' rules, how societies enter into contracts, and their record keeping responsibilities, along with including specific duties for board/committee members, much like those for company directors under the Companies Act.
- 8.3 All current incorporated societies are required to re-register under the new Act by April 2026. For most organisations this will require at least some amendments to their constitution, if not wholesale rewrites. Guidance on this process (including example constitutions) is available on the Sport NZ website ([Incorporated Societies Act 2022 and Regulations | Sport New Zealand - Ihi Aotearoa \(sportnz.org.nz\)](https://www.sportnz.org.nz/legislation/legislation-2022/2022-act-2022-and-regulations)).

#### ***What does this mean for your sport and recreation organisations?***

- 8.4 Some sport and recreation organisations are incorporated societies and will need to comply with the requirements of the Act. Note that an organisation may also be called "incorporated" if it is a registered charitable trust board under the Charitable Trust Act 1957. These organisations have different requirements, which are not set out here.

- 8.5 **Constitution:** An incorporated society must have a constitution, the requirements of which are set out below. Societies should review their constitution to ensure it meets these requirements, and ensure (if necessary) that it holds an AGM or SGM to amend its rules before April 2026. A constitution must include:
- (a) background, including your name, why your society exists – what its purpose is;
  - (b) how someone becomes and ceases to be a member, the conditions of membership and details of your membership register;
  - (c) the makeup of your society's committee and its roles, functions, powers, and procedures;
  - (d) how your society will hold general meetings, make decisions, manage finances and elect or appoint officers;
  - (e) how to amend the constitution;
  - (f) the procedures for resolving disputes;
  - (g) what to do if the society is liquidated or closed;
  - (h) that amendments to the rules must be in writing and approved at a general meeting; and
  - (i) state the annual general meeting must be held within six months of the society's balance date.
- 8.6 More detail on this subject (including [checklists](#) and example [constitutions](#)) is available on the Sport NZ website.
- 8.7 **Membership:** Sport and recreation organisations that are incorporated societies need to collect and hold membership information via an up-to-date membership register. The Act requires each incorporated society to have a minimum of 10 members at all times (body corporates are treated as 3 members each). Each new member consent to being a member.
- 8.8 **Committee obligations:** Each incorporated society is required to have a committee with at least three people. The committee is responsible for governing the incorporated society and must be comprised of a majority of members, rather than independent committee members. Each member of the committee is subject to officer duties, similar to those required of directors under the Companies Act. These include duties to:
- (a) act in good faith;
  - (b) exercise powers for a proper purpose;
  - (c) comply with the Act and constitution;
  - (d) exercise care and diligence; and
  - (e) not create substantial risk of serious loss.



- 8.9 **Contact person:** All incorporated societies are required to have a designated contact person who is at least 18 years of age and ordinarily resident in New Zealand. That person serves as the primary point of contact with the Registrar of Incorporated Societies.
- 8.10 **Record keeping:** The Act requires each incorporated society to keep a copy of the following records at its registered office:
- (a) constitution (and any amendments);
  - (b) register of current and former members (including name, last known contact details, date of joining (or "unknown"), and date of departure (if relevant));
  - (c) interests register (record of all officers' actual, perceived, or potential conflicts of interest);
  - (d) accounting records; and
  - (e) copies of officers' consents.
- 8.11 **Ongoing obligations:** On an ongoing basis each Incorporated Society must:
- (a) hold an annual general meeting no later than 6 months after balance date;
  - (b) file annual returns with the Registrar of Incorporated Societies, along with any required financial statements;
  - (c) keep the Registrar of Incorporated Societies updated if there are any changes to the society's registered address, officers, officer's addresses, contact person, constitution, name or balance date.
- 8.12 An incorporated society may also have ongoing financial reporting obligations, depending on its size.
- 8.13 **Rights in property:** A key feature of an incorporated society is that it cannot give its members an interest or right in the society's property. Members cannot obtain a pecuniary gain from the society, which includes if the society is wound-up. This general rule does not preclude members from receiving a salary or payment for a service provided (whether that be as an employee or a committee member) on arm's-length terms, subject to the rules and requirements of the society's constitution.
- 8.14 **Dispute Resolution:** An incorporated society is required to have a dispute resolution process in its constitution to handle issues raised by members or officers. An incorporated society can choose to use the default provisions under the Act, or design its own process – provided that it follows the principles of natural justice. As at the date of writing, Sport NZ was in the process of putting together a template process for NSOs to use – further detail will be available on the Sport NZ website ([Incorporated Societies Act 2022 and Regulations | Sport New Zealand - Ihi Aotearoa \(sportnz.org.nz\)](#)).
- 8.15 **Re-registration:** All incorporated societies that are registered under the 1908 Act will be required to re-register under the new Act or dissolve. Re-registering involves submitting details of the organisation, including who the contact person(s) is, details of each officer

(including their address and contact information) and the new rules. The Registrar of Incorporated Societies has provided some useful resources to assist incorporated societies with this process, which are available on the Companies Office website ([Law changes for incorporated societies | Incorporated Societies \(companiesoffice.govt.nz\)](https://www.companiesoffice.govt.nz)).

## 9. Company law

### Governing statute

#### **Companies Act 1993**

- 9.1 The Companies Act governs companies, including their incorporation, constitutions, shares, shareholder rights, record keeping, liquidation and the powers and duties of directors.
- 9.2 A company is a legal person, separate from its shareholders. In most cases a company's shareholders have limited liability; that is, they are not liable for the company's debts. This makes companies useful for carrying out specific undertakings, such as a business venture, or acting as the general partner of a limited partnership.

#### **What does this mean for your sport and recreation organisation?**

- 9.3 A sport and recreation organisation may be a company, or have one or more subsidiary companies. These companies need to comply with the Act, and the directors of those companies will need to comply with their director duties.
- 9.4 **Constitution:** Companies may, but are not required to, have a constitution. The constitution may modify or disapply certain parts of the Companies Act, or provide for other matters not inconsistent with the Act. If there is no constitution, then the Act applies.
- 9.5 **Director duties:** Company directors have express duties, including duties to act in good faith and in the best interests of the company, to comply with the company's constitution and the Companies Act, to exercise powers for a proper purpose and not to trade recklessly.
- 9.6 If a sport and recreation organisation is the sole shareholder of a company and the constitution allows for it, the directors may in some circumstances act in the best interests of the organisation instead of in the best interests of the company.
- 9.7 **Shareholder rights:** In general terms, shareholders in a company are entitled to appoint the company's directors, approve the adoption / amendment of the constitution, approve any major transactions, and to approve liquidation of the company. Shareholders do not have involvement in day-to-day management of the company.
- 9.8 **Record keeping:** The Act requires each company to keep a copy of the following records at its registered office:
- (a) the company's constitution (if any);
  - (b) minutes of all meetings and resolutions of directors and shareholders for the previous seven years

- (c) interests register;
- (d) directors' certificates signed pursuant to the Act during the previous seven years;
- (e) full names and addresses of current directors;
- (f) copies of all written communications to shareholders during the previous seven years. This includes annual reports;
- (g) copies of all financial statements and applicable group financial statements for the previous seven completed accounting periods;
- (h) the accounting records required for the current period and the previous seven completed accounting periods of the company; and
- (i) a share register.

9.9 **Ongoing obligations:** On an ongoing basis each company must:

- (a) hold an annual general meeting no later than 6 months after balance date;
- (b) file annual returns with the Companies Office, along with any required financial statements;
- (c) keep the Companies Office updated if there are any changes to the company's registered address, directors, directors' addresses, shares, constitution, name or balance date.

9.10 A company may also have ongoing financial reporting obligations, depending on its size.

## 10. Charities

### *Governing statute*

#### **Charities Act 2005**

10.1 The purpose of the Charities Act is to promote public trust and confidence in the charitable sector. In particular, the Act provides for the registration of societies, institutions, and trusts as charitable entities. It also places certain obligations on charitable entities, such as annual reporting to the Charities Services.

10.2 Registered entities under the Charities Act 2005 are eligible for exemptions from income tax on all or some of their income, and they may be eligible for donee organisation status (which means that people may claim tax rebates for donations made to the charity).

#### ***What does this mean for your sport and recreation organisation?***

10.3 If your organisation is a charitable entity you will need to ensure that your organisation:

- (a) acts in a manner that is consistent with the specified charitable purposes of the entity;
- (b) complies with your reporting obligations – which includes annual returns that must be filed with Charities Services;

- (c) notifies Charities Services of certain changes, including changes to trustees, officers, changes to rules, and to the terms of the Trust;
- (d) provides any information about the trust that is requested by Charities Services;
- (e) properly identifies all of the 'officers' of the charity, and ensures that they are not disqualified from acting as officers, and are listed on the Charities Register. 'Officers' includes any other person (individual or corporate) who has a position that enables them to exercise significant influence over substantial decisions (such as a CEO or treasurer);
- (f) reviews its governance procedures (whether set out in your charity's governing document, policies adopted by the charity or elsewhere) at least once every 3 years;
- (g) maintains protocols around 'interested trustees' to avoid conflicts of interest arising and to manage interests when they do arise;
- (h) discloses its Charities Act registration number to the public on request when fundraising.

10.4 If your organisation is not a charitable entity, you must not use a style or title including the words "registered charitable entity".

### **Governing statute**

#### **Charitable Trusts Act 1957**

10.5 The trustees of a charitable trust can apply to the NZ Companies Office to be incorporated as a board under the Charitable Trusts Act 1957. To do this, a charitable trust must exist principally or exclusively for the following charitable purposes:

- (a) the promotion of education;
- (b) the promotion of religion;
- (c) the relief of poverty;
- (d) other purposes of benefit to the community.

10.6 Once a trust board is incorporated, the charitable trust board becomes a body corporate. This means that the board has a separate legal identity from the individual trustees who make up the board. A board can hold property, sue and be sued, do and suffer all such acts and things as bodies corporate may lawfully do and suffer, and has a common seal that it can attach to important contracts. Despite changes to its membership, an incorporated trust board continues to exist until it is dissolved or liquidated.

#### **What does this mean for your sport and recreation organisation?**

10.7 If your organisation is an incorporated charitable trust, you will need to:

- (a) ensure you advise the Companies Office if you change your address details, or trust deed, within one month of the change being approved;

- (b) if you wish to change the name of the trust, apply to the NZ Companies Office to have the name updated on the register (the name change will not take legal effect until that has been done);
- (c) ensure that you comply with all applicable laws, such as meeting tax obligations (if applicable); and
- (d) ensure board members understand that they are also required to comply with the duties applying to trustees under the common law and the Trusts Act 2019, as well as with the Charities Act 2005 if your organisation is registered as a charitable trust under that Act.

## Part 3: Requirements of Sport New Zealand national policies

As set out in your Relationship Agreement with Sport NZ or High-Performance NZ (if applicable), your sport and recreation organisation must, unless agreed otherwise, comply with any Sport New Zealand national policies existing at the date of your Agreement, and any new national policies as developed and notified to you from time to time.

### 11. National Policy for Gender Equity in Governance

#### **Application and purpose**

- 11.1 This National Policy applies if you are an organisation that is party to a relationship agreement with Sport NZ or High-Performance Sport NZ, and you receive more than \$50,000 in any 12-month period under Investment Schedules of your Relationship Agreement.
- 11.2 The purpose of the policy is to ensure that there is greater diversity on Boards. This is because diversity brings a breadth of perspective and experiences, which result in better decision-making by boards and creates stronger, more sustainable organisations.

#### **What does this mean for your sport and recreation organisation?**

- 11.3 If you are required to comply with the policy, you must ensure that at least 40% of the members on your board are self-identifying women. This is to be calculated by reference to board members in office at any point in time who have voting rights.
- 11.4 Therefore, when a vacancy on the Board arises, you must:
- (a) determine whether only self-identifying woman are eligible to be nominated and appointed as a member on the board; and
  - (b) only appoint a self-identifying woman to fill that vacancy unless 40% of the members on the board are already self-identifying women.
- 11.5 However, you will not be in breach of the policy if:
- (a) you fail to meet the requirement due to a casual vacancy arising; and
  - (b) as soon as practicable after the casual vacancy occurs, you meet the requirement.
- 11.6 If you fail to comply with the National Policy, Sport NZ may exercise its rights under its Relationship Agreement with you, and you may become ineligible to receive other funding.
- 11.7 Sport NZ undertakes audits on boards compliance with the Policy. Under your Relationship Agreement you are required to give information requested by Sport NZ, including information on the composition of your board.
- 11.8 If, for any reason, you identify that you not in compliance with the policy, it is recommended that you promptly notify Sport NZ of the non-compliance, and your proposal to rectify the issue.

11.9 Organisations that are party to a relationship agreement with Sport NZ or High-Performance Sport NZ, but that do not meet the \$50,000 threshold, are encouraged, but not required to meet the requirements described above.

[View a copy of the full policy.](#)