



2. FACT SHEET ON UNINCORPORATED GROUPS

This fact sheet outlines good practice for rules that an unincorporated group should consider. It also explains the benefits that can be obtained through becoming an incorporated body.

INTRODUCTION

An unincorporated group is a group of people who have combined to further some non-commercial interest. Their interest might be social, sporting, political, scientific, religious, artistic or humanitarian.

Any rules an unincorporated group has will derive from an agreement between the members or an implied agreement based on past practice, or both. But as an organisation it will have no particular status.

Usually an unincorporated group will have some essential characteristics: members may be able to come and go at will; there may be a written or oral contract between the members; and the start date will be the date on which the group was formed.

GOOD PRACTICE FOR RULES AND PROCESSES

Why have recorded rules?

To operate smoothly, an unincorporated group should record its rules and processes for managing the group's affairs and making decisions. Recorded rules help to determine what is right and wrong if disputes arise.

What should our rules cover?

A recommended minimum would be to have written rules stating:

- the group's name
- the group's objects or purpose
- how a person becomes and ceases to be a member
- any obligations imposed on members.

It may also be useful to have rules:

- for how general meetings will be convened
- for the method of voting at general meetings
- for how officers of the group are appointed
- that establish positions of officers (such as chairperson and treasurer) on any committee and the titles of those positions
- for the control of finances and financial accounts

- for how the group's rules can be amended
- for how to dissolve the group.

Processes for managing the group's affairs

The business of most unincorporated groups is usually delegated to a committee of members that manages the group's affairs on behalf of the membership.

It is useful to include clauses in the group's rules or have set procedures that deal with financial controls and investment of the group's funds. Clearly identifying who is responsible for keeping proper accounts and the procedures for receiving and withdrawing funds (requiring two committee members' signatures, for example) will help the group operate smoothly.

Processes for decision-making

The group's rules should clarify its decision-making processes and clearly state:

- which decisions need to be approved by the ordinary members
- who can vote
- voting procedures (for example, a show of hands) and whether members can vote by proxy, post or email
- how many people must agree for there to be a valid decision (for example, a simple majority).

LIMITATIONS OF UNINCORPORATED STATUS

Membership status is uncertain

The relationship between members in unincorporated groups is often uncertain. There may therefore be doubts about membership rights and obligations, including admission to and resignation from membership, complaints, disputes, discipline and expulsion of members.

Uncertainty of rights

Unlike incorporated groups, there is no requirement for unincorporated groups to have rules. However, if there are no rules or the rules are unclear, it may be difficult to determine who is right or wrong if

disputes arise. If an unincorporated group does have rules, it may also be difficult to prove how any rules were adopted, whether new members agreed to them, and whether they are binding on members.

No perpetual existence and no legal standing

Unincorporated groups are not separate legal entities. Therefore they have no continuing existence that is independent of their members, and no legal standing to own property or to borrow money. Because of this it is difficult to provide security to lenders.

Committee members, or possibly all members, are potentially personally liable for any obligations incurred by the group or judgment made against the group by the Courts.

Personal liability

Committee members of an unincorporated group are likely to be:

- personally responsible for the group's debts and debts incurred by an employee of the group, particularly if the committee members knew the debt was being incurred or they agreed in some way to the transaction
- personally liable to a person who suffers damage as a result of the negligence of an employee or other person involved in the group – for example, in failing to organise an event properly.

If the rules require a committee to be appointed, the committee has no authority to bind ordinary members.

Individuals who are liable (either the person who committed the wrong or the committee) may have the right to be indemnified out of any property the group members hold individually, if their rules provide for this. However, it is doubtful that they have the right to be indemnified by ordinary members unless this is stated in the group's rules.

Members may also be personally liable to third parties for breaches of trust, breaches of fiduciary duty and property conversion, as well as the usual potential liability of a member for torts or committing any crime, such as theft of the group's property.

THE BENEFITS OF INCORPORATION

A society may incorporate under the Incorporated Societies Act 1908, or a charitable society or trust may incorporate under the Charitable Trusts Act

1957. When they do so, they become a separate legal entity. This has a number of consequences and benefits.

Separate legal identity

An incorporated group can:

- execute documents in its own name (leases or deeds, for example) under common seal (the society's official stamp)
- enter into contracts in its own name, subject to its own rules
- buy, sell, own, lease and rent property, subject to its own rules
- borrow money and give securities, subject to its own rules
- sue and be sued in its own name.

Perpetual succession

An incorporated group has "perpetual succession" – its existence is not limited to that of any of its members and the group continues to exist as long as it complies with the law and is not wound up. Because the group can own property in its own name, it is not necessary to record changes of property ownership as the membership changes. This permanence gives additional reputability to the group when entering into contracts or seeking grants or donations.

Limited liability

The members of an incorporated group benefit from gaining "limited liability". This means that when the group incurs any debts or other legal liabilities, it can usually only be sued in its own name, and its members are not usually personally responsible.

However, members may be held personally liable where, for instance, they do not make it clear to third parties whom they are dealing with that any liability the member incurs is for the group.

UMBRELLA ORGANISATIONS

An umbrella organisation is a useful structure where a group coming under the umbrella does not wish to set itself up as an incorporated body with a separate legal identity. An umbrella organisation, which must in practice be an incorporated body, allows the group to get on with projects without having to take on the costs and responsibilities of being incorporated.

The umbrella organisation may receive and pass on any money to a group that is within its structure and may charge a handling or administration fee for its services. There should be a written agreement between the group and the umbrella organisation to ensure the relationship is clear. Both parties should seek legal advice before signing any agreement between them.

An umbrella organisation is similar to the local committee structure explained in *Fact sheet 5: Relationships between national, branch and local offices*.

RESOURCES

Fact sheets

Fact sheet 3: Incorporated societies

Fact sheet 5: Relationships between national, branch and local offices

Fact sheet 16: Torts (civil wrongs) and criminal offences

Websites

www.charities.govt.nz

The Charities Commission is responsible for registering charities. The website provides more detailed fact sheets on the registration process.

www.community.net.nz

The “How-to Guides” section has a community development resource kit covering all aspects of establishing and running an organisation.

www.dia.govt.nz

The Department of Internal Affairs has information about administering lottery grants and community grants schemes.

www.ird.govt.nz

Inland Revenue’s website has information on not-for-profit groups. Download a copy of the brochure *Smart business – An introductory guide for businesses and non-profit organisations* (IR320).

www.lawaccess.lsa.govt.nz

This website offers a catalogue of law-related information resources, with over 140 New Zealand organisations listing their resources on the site.

www.lsa.govt.nz

The Legal Services Agency has information on community law centres throughout New Zealand.

www.societies.govt.nz

Societies and Trusts Online provides an information library with forms and fact sheets. It enables incorporated societies to maintain organisational details and provides access to a register of incorporated societies and charitable trusts.

www.tpk.govt.nz

Te Puni Kōkiri’s website has information on effective governance.

Publications

Von Dadelszen, M – *Law of Societies in New Zealand* (2000, Wellington, Butterworths)

Von Dadelszen, M – *Members’ Meetings in New Zealand*, 2nd ed (2004, Wellington, LexisNexis)

