

# NOT-FOR-PROFIT ORGANISATIONS AND THE LAW



Delivered by the Capable Sector Project: A collaborative between Volunteer Kāpiti and Kāpiti Impact Trust, supported by the Kāpiti Coast District Council.

## Helpsheet for Governing Group Members

Trustees, board and committee members, and directors of community groups have a duty to act in good faith in the best interests of the entity they hold governing responsibility for.

A sound understanding of relevant governance law and other laws that apply to a not-for-profit organisation, helps governing group members to ensure they practice good governance in carrying out their duties.

Summary of **common forms of legal structure** and **who has legal liability**:

	Unincorporated group	Incorporated society	Registered charitable trust (society based)	Registered charitable trust (trust based)	Company
<b>Relevant legislation</b>	None	Incorporated Societies Act 1908 (Incorporated Societies Act 2022 effective from 5.10.23)	Charitable Trusts Act 1957 Trusts Act 2019	Charitable Trusts Act 1957 Trusts Act 2019	Companies Act 1993
<b>Minimum people required</b>	2 individuals	15 individuals (10 under 2022 Act)	5 individuals or existing society	2 or more trustees	1 or more shareholders; 1 director
<b>Governing group members' liability</b>	Personal, individual and joint liability for debts, breaking the law, breach of statutory obligations and offenses	Limited liability if decision makers act legally, prudently within the society's objects and not for personal gain	Trustees personally liable, but trust deed may grant them the right to be indemnified out of trust property	Limited liability if trustees act legally and prudently within the trust's objects and not for personal gain	Limited liability if directors act legally and prudently within company's objects and not for personal gain.  Specific legislative provisions for directors
<b>Who is liable</b>	Individuals	Entity	Individuals if not registered with the Companies Office; Entity if registered with the Companies Office		
<b>Tax status</b>	Income not taxed if group has charitable status with Department of Internal Affairs (DIA) and Inland Revenue Department (IRD)				Charitable status possible

Adapted from source: Community Law – [communitytoolit.org.nz](http://communitytoolit.org.nz)



For new community groups, taking independent legal advice is important to ensure that the legal structure and governance documents adopted are appropriate for the group's purpose (delivering services, owning assets etc).

For existing community groups, a periodic review of the legal structure and governance documents in place by a competent specialist is advisable.

**Resources available to help include:**

- Charities Services (advice clinics): [https://www.charities.govt.nz/news-and-events/-Community\\_Law](https://www.charities.govt.nz/news-and-events/-Community_Law):  
<https://communitytoolkit.org.nz/choosing-the-right-legal-structure-for-your-group/>
- Companies Office: <https://ct-register.companiesoffice.govt.nz/help-centre/getting-started/about-charitable-trusts/>
- CommunityNet Aotearoa: <https://community.net.nz/>
- Institute of Directors NZ: <https://www.iod.org.nz/nfp/#>
- Citizens Advice Bureau: <https://www.cab.org.nz/article/KB00001910>
- Sport New Zealand: <https://sportnz.org.nz/resources/incorporated-societies-act-2022-and-regulations/>

Depending on a community group's purpose, **compliance with other laws may also be required**, including:

- relevant employment laws <https://www.employment.govt.nz/about/employment-law/>
- Health and Safety at Work Act 2015
- holding individuals' personal information <https://www.data.govt.nz/toolkit/privacy-and-security/data-privacy/>
- fundraising using raffles [https://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Services-Casino-and-Non-Casino-Gaming-Lottery-Game-Rules](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-Lottery-Game-Rules)

**Volunteering New Zealand** provides information on **volunteers and the law**:

<https://www.volunteeringnz.org.nz/resources/volunteer-laws/>

For further information on **community governance**:

<https://volunteerkapiti.org.nz/organisations/resources> or contact us here at Volunteer Kapiti.