



11 November 2020

Hon. David Clark
Minister of Commerce and Consumer Affairs
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Dear David

INCORPORATED SOCIETIES ACT 1908 – PROPOSED REFORM

In December 2019, the Board of the New Zealand Amateur Sport Association Inc.¹ asked me to write to your predecessor, the Hon. Kris Faafoi, regarding the proposed reform of the Incorporated Societies Act 1908, (the Act).

As you may be aware, many non-profit community sport organisations are registered under the Act². You may not be aware that in 2019 alone, over 350 of these organisations were dissolved³ by the Registrar (one-third of the total incorporated society dissolutions), under s. 28 of the Act. Despite the impact of COVID-19 on the normal operations of community sport organisations, a further 138 dissolution orders have been made since 1 January 2020.

The act of dissolution results in the dissolved entity no longer existing for legal purposes. The Association understands that many dissolved non-profit community sport organisations continue to operate regardless, in many cases unaware of their dissolved status, the reasons for their dissolution (and the implications), and the potential remedy of revocation.

In reflecting on the above (and with reference to relevant findings from the Association's annual National Sport Club Survey), the Association suggests that the overall regulatory burden placed on volunteers who support sport in the community today, is a major contributing factor to the governance issues represented by the above dissolution statistics.

The Association's Board is concerned that the proposed reform of the Act will place additional regulatory burdens on community sport organisations and their volunteers, which will potentially accelerate the number of involuntary dissolutions.

¹ The Association was formed and incorporated in April 2017 to work collaboratively with all sporting codes in promoting, fostering, advancing and encouraging the core values of organised amateur sport.

² The Law Commission has identified that approximately 45% of the over 23,000 incorporated societies are cultural, sporting and recreational bodies.

³ The Registrar will dissolve an incorporated society if it is believed that the society is no longer operating, (e.g. if the society fails to file a copy of its annual financial statements).

In principle, the Association believes that legislative reform should seek to ameliorate (rather than further impair) the governance capability of non-profit community sport organisations.

The Association posits that there are a broad range of issues arising from the proposed reforms (contained in the Law Commission's report) which are unlikely to be within the competence and resources of existing registered incorporated societies to manage, including (but not limited to): the duties of officers (training and compliance, enforcement of statutory duties); managing conflicts of interest (including determination of materiality and maintaining a register of disclosures); financial reporting (the required format and process for filing); transitional timeframe and costs; development of dispute resolution procedures (complaints, grievances) and their arbitration; and the potential requirement to defend criminal offences brought by the Registrar against the organisation (or its officers).

While there has been a clear and well-described process of consultation since reform of the Act was first mooted in 2011, the Association notes that none of the eight member Reference Group convened by the Law Commission in the initial stages of reform consultation represented the community sport sector, while only 6% (12) of the 208 submissions received by the Commission were from entities associated with sport in the community. The Association suggests that it is possible that many of the governance issues for non-profit community sport organisations registered under the Act in its current form have therefore not been fully considered.

The Association's vision is that all communities (both urban and rural) have viable and enduring amateur sporting bodies which attract, engage, build and sustain membership based on each participant's and each community's unique needs. Participation and achievement in amateur sport is essential for healthy communities and must be a critical goal, for a healthy society. New Zealand's legislative framework must reflect this goal without disincentivising volunteers in the community from providing the necessary regulatory frameworks to deliver this vision.

We would appreciate the opportunity to meet with you (or your officials) to discuss this letter in more detail, at your earliest convenience.

Yours sincerely

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cc. Hon. Grant Robertson
Minister for Sport and Recreation