



21 October 2024

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Dear Rebecca

**CODE OF INTEGRITY FOR SPORT AND RECREATION
Exposure Draft For Public Consultation – (Version 1.2)**

Thank you for the opportunity to provide feedback to the Integrity Commission, (the Commission) on the Exposure Draft of the Code of Integrity for Sport and Recreation, (the draft Code). The content of this letter (and the recommendations therein) has been approved by the Board of the New Zealand Amateur Sport Association Inc., (2669211), (NZBN: 9429046103086).

To assist the Commission in understanding the method and process we have followed in preparing this letter, we approached our review of the draft Code on a top-down, principles-basis, with four specific draft Code amendments and one specific legislative amendment arising from our review, for the Commission's (and Government's) consideration.

We are both hopeful and confident that you will agree that our feedback (and the recommended amendments arising) are common sense and appropriate. We welcome an opportunity to discuss this letter with you in further detail at a mutually convenient time.

Principle 1

Expressio unius est exclusio alterius

In para. 2.6 (b) of the 2023 Departmental Disclosure Statement (DDS) relating to the regulatory impact of the Integrity Sport and Recreation Bill, it was noted that "integrity codes issued by the Commission will not be mandatory", with this principle subsequently enacted in s. 21 (1) of the Integrity Sport and Recreation Act 2023, (the Act).

In support of this legislative element, the DDS observed that, “a non-mandatory and collaborative approach to adoption of the codes is considered appropriate given that sport and recreation organisations are often small, local, volunteer-based and may have several functions of which sport and recreation is just one.” The DDS went on to note that it will be open to the Commission, “to explore other non-legislative mechanisms available to government to encourage compliance.”

As envisaged by the DDS (and as subsequently affirmed by the Act), we concur that there may be many and varied reasons why an organisation (being defined by the Act as “any body of persons, whether incorporated or unincorporated”) does not adopt an integrity code, including (but not limited to): a. where an organisation has established its own internal governance framework which meets the general intent of an integrity code; or b. where the nature (or scope) of an organisation’s sport activities (and the composition of its membership), are considered by that organisation’s governing body to be of a materially lower order magnitude of risk to the community.

Bearing the above in mind, the Association suggests (and we anticipate that the Commission concurs) that an organisation which does not adopt an integrity code cannot be assumed to be any less focused on managing risks contemplated by an integrity code, compared to an organisation (which for its own reasons) elects to adopt one.

- **Draft Code Amendment 1**

We therefore recommend (noting all organisations are equal before the law, irrespective of whether or not they have adopted an integrity code), a necessary clarification in the draft Code, to be included in the section headed, “Application of the Integrity Code,” as follows.

Any organisation which does not adopt this Integrity Code, will not (either directly or indirectly) be sanctioned or disadvantaged, through the use of any legislative or non-legislative mechanism (financially, or otherwise) for not doing so, e.g., when applying for community grant funding, or in the case of any other benefit which might otherwise ordinarily be made available to the organisation by a Crown agency, or other Government or local authority entity, (e.g., in respect of access to facilities or resources available to the community generally), compared to an organisation which elects to adopt this Integrity Code.

- **Draft Code Amendment 2**

Consistent with the draft Code Amendment 1 above, we further recommend the following change to para. 3 (1) (a) and (b) of the draft Code.

- (a) *~~setting promoting~~ minimum standards to apply across the sport and recreation sector;*
- (b) *requiring organisations which ~~are~~ elect to be bound by the Integrity Code on a voluntary basis to put policies and procedures in place to implement the minimum standards; and*

- **Legislative Amendment 1**

With reference to draft Code Amendment 1 above, we submit (more generally) that any organisation that does not adopt an integrity code created by the Commission must not be discriminated against in any way, in terms of any financial or non-financial benefit or legal protection which would otherwise apply to an organisation which elects to adopt an integrity code.

We therefore recommend that an amendment be made to s. 21 of the Act¹, as follows.

(7) It is a breach of an integrity code for any person or entity to (in knowing that an organisation has not adopted an identity code) prevent, limit, or otherwise restrict access to funding, resources, advice, or facilities to the organisation which has not adopted it.

Principle 2

Laesa opinio

With reference to para. 23 (1) (a) of the draft Code, we note the reputational risks to the officers (or volunteers) of an organisation, which may arise from complaints made under the draft Code (which we note may be made anonymously), and which are subsequently determined by the Commission to be “vexatious”.

We suggest that (whether “vexatious”, or otherwise considered “guilty by association”), the risk of being subject to statutory complaint and investigation, will discourage volunteers required for the governance of community sport organisations to step forward to undertake roles where, (as a member of the responsible Committee of that organisation), that officer (or volunteer) may be the target of complaint arising from an alleged breach of the draft Code.

In small communities where sport organisations often serve a social purpose beyond the sport for which the organisation was created, the reputational risk for being subject to complaints which are potentially “ad hominem,” is unlikely to be conducive to the well-being of the organisation (or to the well-being of the community generally), and a disincentive to volunteer in a governance (or other) role authorised by that organisation.

- **Draft Code Amendment 3**

We therefore recommend amending para. 21 of the draft Code as follows.

(5) Any complaint or disclosure will be received and handled by the Commission in accordance with the principles of natural justice, with the rights of any person (associated with an entity which has adopted the Integrity Code) who is the subject of the complaint or disclosure, fully protected in accordance with all relevant legislation, including (but not limited to) the Defamation Act 1992.

¹ This amendment could be included in the Statutes Amendment Bill (80-1) currently before Parliament.

Principle 3

Limitata rusticis

While incorporation protects the members of a community sport organisation from personal liability for the society's debts or other obligations, it does not necessarily protect those responsible for the governance of the entity, (i.e., the Committee as defined by s. 45 of the Incorporated Societies Act 2022) from personal liability where it is alleged that an officer (as defined by s. 47 of the Incorporated Societies Act 2022) committed (or failed to prevent) an act under which a complaint can be made in respect of s. 21 of the draft Code.

We note that "Combined Association Liability" insurance protects an organisation from claims by third parties for legal liability incurred through advice or services provided to their members or the general public. Cover is provided for the association, its officers, board of management, board of trustees or management committee members.

The average cost per annum for a community sport organisation for this insurance is approximately \$2,000 to \$3,000 per annum, (incl. GST). If a community sport organisation were to adopt an integrity code, it would be advisable to have this cover in place in order to protect the organisation and its officers from statutory liability. (We note that some NSOs may provide this cover).

We have approached an international insurance broker which arranges for Combined Association Liability insurance for New Zealand community sport organisations for comment.

They advise that while insurers don't tend to provide generalised statements on insurance cover, (as they treat each claim on its own merit), it is expected that if a claim is brought by a regulatory body for a breach of an integrity code, Statutory Liability cover (allowing for defence costs for unintentional breaches) would be available to the organisation, subject to the terms and conditions of the policy cover and the circumstances of the individual claim.

In this regard, it is not thought that the adoption of an integrity code will necessarily increase insurance premiums for an insured organisation, but (like any risk), we are advised that the number of claims that result from the adoption of an integrity code, and the ongoing modelling done by insurers over time, will determine whether or not they do.

We further note that the Act envisages that unincorporated bodies (community sport organisations) may adopt the draft Code, which we consider to be highly unusual. For the reasons explained above, we suggest that it would be unwise for an organisation where all members share liability equally, (i.e., without the statutory protection of incorporation) to be encouraged to adopt the draft Code. We believe that it is unlikely that all members of an unincorporated sport organisation (if informed of the risks of doing so), will agree to be held personally liable for any statutory offences, (or indeed continue as a member of that sport organisation).

We recommend that it is therefore a prerequisite for an organisation that wishes to adopt an integrity code to provide evidence to the Integrity Commission before doing so, that it holds Combined Association Liability insurance, or equivalent cover, either directly or under a master insurance policy provided by an organisation with which it is affiliated.

- **Draft Code Amendment 4**

We recommend that Schedule 2, part 2 of the Code be amended as follows.

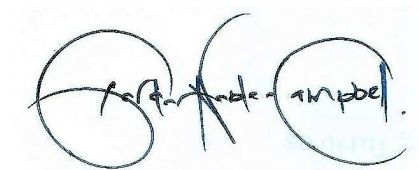
(7) An organisation that wishes to adopt the Integrity Code must hold Combined Association Liability insurance, (or the equivalent cover), either directly or under a master insurance policy provided by an organisation with which it is affiliated.

In conclusion, while we acknowledge the positive intentions of the draft Code, we do not believe it is fit-for-purpose for all community sport organisations, (as envisaged by the Act).

Furthermore, we consider that without the adoption of the recommended amendments to the draft Code (and the Act) outlined above, the risks of regulatory coercion may have negative unintended consequences for amateur sport in New Zealand. We appreciate that the Commission will consider a wide range of feedback as a result of this consultation period including that of the Association.

As noted, we are available to discuss our feedback should you wish to do so.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Gordon Noble-Campbell', is written over a light blue circular stamp.

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