



## FREQUENTLY ASKED QUESTIONS

**Q** *Why are SONZ recommending changes?*

**A.** Following the initial consultation in 2019 there was an alignment between clubs and SONZ that we needed to make some changes. Clubs were seeking more independence and a better working relationship with SONZ. SONZ have received professional advice from governance experts and funders on our need to change to bring our structures into alignment with best practice.

**Q** *What are the disadvantages of staying as we (Club) are? (unincorporated and not a charity)*

**A** Unincorporated groups have major limitations. The group has no separate legal existence. This means:

- The members (especially committee members) are personally, jointly and individually liable for the Club's debts, statutory obligations and offences
- The group cannot sue or be sued. Proceedings are in the names of the members, most often the committee members as the names of members may be known to a third party
- It is the members who own property or borrow
- There is no perpetual succession, the group only continues through its members
- For risk management and audit, funders and sponsors often now require that a recipient group is incorporated, meaning that unincorporated groups may miss out on funding

**Q** *What are the advantages of becoming incorporated and registered charitable trust?*

**A** There are two parts to this answer:

Incorporation under the Charitable Trusts Act 1957 gives your Club separate legal status and perpetual existence. It overcomes all of the disadvantages of an unincorporated group as listed above. The Club itself is liable for what it does, not the trustees or members.

Registration as a charity under the Charities Act 2005 means your Club is:

- Entitled to call itself a registered charitable entity. It is an offence to even imply that you are a registered charitable entity if you are not registered under the Charities Act 2005
- Able to apply to funders who only fund registered charities
- Eligible for exemptions from income tax on all or some of your income, as well as being entitled to other tax benefits
- Able to display your registration number on promotional and identification material to provide proof of your registered charitable status to prospective donors and funders

**Q** *If we become a trust, won't the trustees have more responsibility? Isn't there some personal risk in being a trustee?*

**A** Yes trustees do have responsibilities, but it is important to remember that the trust itself is the legally responsible entity. The proposed club trust deed provides that

once the trustees elected by members onto the board, the trustees have the power and mandate to “get on with the job” without undue interruption from members of the Trust. Members’ rights are primarily to elect the trustees and participate in AGMs.

Trustees have duties under the Trusts Act 2019. The five mandatory duties for the trustees, none of which are unreasonable or unexpected, are:

- To know the terms of the trust
- To act in accordance with the terms of the trust
- To act honestly and in good faith
- To act for the benefit of the beneficiaries
- To exercise their powers for a proper purpose

Trustees are generally entitled to be indemnified from the trust assets when they face claims (provided they have not been fraudulent or negligent).

**Q** *We are a small club, what is the least number of trustees we would need? Is there an alternative?*

**A** Your Club should operate with at least 3 trustees. Governance principles indicate that 5 to 7 trustees is a good number, however a number of smaller Special Olympics Clubs may find 3 – 5 Trustees a manageable number for them. The efficiency and effectiveness of a Board may not be optimal outside that range. Under the Trusts Act 2019 the minimum number of trustees is 1, but that invites undue risk because of sole reliance on one person who has unilateral control. Funders and sponsors may not have confidence in funding clubs with very few people involved in decision making.

If there is more than 1 trustee, then there is a default duty under the Trusts Act for the trustees to act unanimously. This duty can be varied in a Club’s trust deed so that a lower threshold can apply where unanimity is not achieved.

Long term clubs should consider how to recruit Trustees who are independent of the day to day running of the clubs e.g. coaches and general volunteers. This can provide expertise to the Board and also relieve some of the workload from family members.

**Q** *How long will it take to convert to an incorporated and registered charitable trust? What would we need to do?*

**A** It is a two-step application process:

- First, apply to the Companies Office to incorporate;
- Second, after incorporation, apply to Charities Services to become a charity.

It will take a few months for Clubs to transition and SONZ may support Clubs with the transition process.

To get started you will need to get together as a Club and discuss some matters such as how you want your Club and trust board to run and who will be your initial trustees. You will need to write your rules, including your charitable purpose. SONZ has provided a form of Charitable Trust Deed for you to use as a base in writing your rules.

*Companies Office application:* You will need to complete an application form for incorporation as a charitable trust board. You will be asked to provide the name you have chosen for your trust board (so do check to ensure the name you have chosen is available for use), your trust deed, and the names and addresses of your Trustees. For more information about this application process, see <https://ct-register.companiesoffice.govt.nz/help-centre/starting-a-charitable-trust-board/things-to-do-before-you-apply/>.

*Charities Services application:* You will need to complete an application form and an Officer Certification form for all trustees and submit these documents to the Charities Services. The Charities Services will then review your application and consider whether your Club meets the requirements to be a charity. You may be contacted to provide more information. If your application is accepted, the Charities Services will provide you with a unique charity number and add your Club's details to the Charities Register. For more information about this application process, see <https://www.charities.govt.nz/ready-to-register/ready-to-apply/>.

There is no cost to submitting an application to register as a charity.

**Q** *Can we still be called a Club?*

**A** Yes, you can still refer to yourselves as a Club even though your legal structure is now different. When dealing with external parties you will also need to disclose your legal name.

**Q** *What are the obligations of being a registered charitable trust?*

**A** As a registered charitable trust, you will need to:

- Operate your Club in accordance with NZ charities law and your Club's rules
- Carry out activities in line with your charitable purpose and ensure your Club only provides public (and not private) benefit
- Report annually to the Charities Services (including submitting an annual return and financial statement or performance reports (as applicable))
- Notify the Charities Services of any changes to your Club (e.g. changes to your rules or officers)

**Q** *Do we have to prepare financial statements?*

**A** As part of your obligation to report annually to the Charities Service, you must include financial statements or performance reports. You will need to prepare these statements or reports based on the reporting tier you fall into as set out in the diagram below. SONZ expects the majority of Clubs will fall into Tier 4. For more information about reporting tiers, see <https://www.charities.govt.nz/reporting-standards/which-tier-will-i-use/>.



**Q** *How much do annual returns cost?*

**A** You may need to pay a fee to file your annual return depending on your gross income for the financial year you are reporting on. If your gross income is less than \$10,000 there is no fee. If it is over \$10,000 and you complete your annual return online, the cost is \$51.11 including GST. For more information about fees, see <https://www.charities.govt.nz/im-a-registered-charity/annual-returns/fee-summary/>.

**Q** *What are the options if we do not want to be a Charitable Trust?*

**A** Trustees will discuss with clubs individually that do not want to become a Charitable Trust and set out options, which would include some minimum standards to ensure that it is clear on responsibilities for Health and Safety, Finance, Reporting etc.

**Q** *What is the Governance Mark and why is SONZ undertaking this programme of work?*

**A** The Governance Mark is an initiative established by Sport NZ in 2016. Developed in partnership with the sector, it is the only externally accredited governance development programme of its kind internationally with a focus on play, active recreation and sport.

The Governance Mark indicates an organisation is clear about how it intends to use time and money. The board has a considered process for strategy development and an ongoing regime for monitoring efficacy of that strategy. Accountability to stakeholders is delivered through a planned programme of communication. The business of the organisation is conducted within a clear ethical framework. The board understands the strategic nature of its role. Meeting processes mean that time is well spent and the agenda is primarily future focussed.

To gain the Mark, the organisation has been through a process of self-assessment, third-party review, governance development and reassessment. The Mark assesses the organisation's alignment with the Governance Framework for sport and recreation in New Zealand, which covers the key areas of:

- clarity and cohesion
- people



- boardroom processes
- integrity and accountability.

The Mark award requires complete alignment with the foundation elements of the framework and 80% alignment with the core elements. Based on internationally accepted good governance standards, [Nine Steps to Effective Governance](#), associated templates and significant resources assist Boards to become well-grounded and capable in the face of a rapidly changing world.

**Q** *What is the structure of the SONZ Board going forward?*

A Recommendations from BoardWorks and Sport NZ has been to reduce the Board composition from up to 13 to 7 – 9 Trustees. The recommendations presented is based on 7 Trustees.

**Q** *How is the Chair of the SONZ Board elected?*

A The Chair of the SONZ Board will be elected by the Trustees at the first meeting following the AGM.

**Q** *How will the voting rights work for the General Meeting?*

A Under the proposed new constitution, all Trustees moving forward will have equal voting rights, currently only the elected members have the ability to vote at a General Meeting.

**Q** *How will voting for SONZ Elected Board members work under the new structure?*

A SONZ will advise of a vacancy and provide a set of skills that we need on the Board. Nominations would be received and clubs will have one vote per election at an AGM. Nominations would need to be a current registered volunteer at Special Olympics for their club.

**Q** *What role will the SONZ Board have in the appointments of an elected members?*

A The Board will provide a skills matrix that they are looking for in new Trustees and call for nominations. The Board would actively encourage people to apply for these roles.

**Q** *How will the Athlete Representative be selected for the SONZ Board?*

A The Athlete Representative will be selected from the Athlete Input Council, where there will be an Athlete Leader from each region sitting on the Input Council.

**Q** *What will the role of the Regional Council be?*

A The role of the regional council fills a clear need for sharing of ideas and networking for clubs. The question that the Board has asked is if the Regional Council's need to a separate legal entity, or just a network of clubs that meets from time to time. The Board are recommending that the Regional Councils are an informal group of people that meet from time to time and not need to be an independent legal entity. This is the Board recommendation not requirement.

**Q** *Have Special Olympics International been informed of the proposed changes?*

A Yes, we have worked with Special Olympics Asia Pacific, who have received a copy of the documentation and are comfortable with the process that we are running, and that the key requirements from Special Olympics are captured.

**Q *What do clubs need to do if they want to move forward with becoming a Charitable Trust?***

A Contact Carolyn at [ceo@specialolympics.org.nz](mailto:ceo@specialolympics.org.nz) initially to let her know that the club is keen to move forward and then we will work with the clubs around specific steps that clubs will need to undertake. E.g. confirmation of decision from the club committee, identifying who in the club would be able to undertake this work, work with SONZ to set a timeline for the club and understanding of what support the club may need. Once the Board has reflected on the feedback from all of the clubs we will be in a better position to confirm any changes and all the steps that clubs would need to take and a workable timeframe to complete this.

**Q *Is there still an affiliation fee if these changes take place?***

A Yes the affiliation fee is based on the number of athletes a club has. The fee is calculated at \$20 per athlete and is payable by the club. The affiliation fee in 2021 was waived due to the impact of Covid 19.

**Q *How difficult is it to change a Trustee under a Charitable Trust deed?***

A The draft Trust Deed is drafted in a straight forward manner. Trustees will change from time to time, similar to how committee members change. Trustees will be appointed for a term, that each club can determine what period this might, the recommendation is 2 – 3 year terms, to provide clubs with some consistency. Section 5 of the draft Trust Deed sets out details around members of the Board.

**Q *Can clubs become a charitable trust immediately?***

A In theory yes, but it would be wise to wait until we receive all of the feedback from clubs to ensure that any amendments or changes to the draft templates. There is nothing that would prevent clubs from becoming a Charitable Trust once the documentation is finalised.

**Q *What would happen if you decided to do make the transition in the middle of the financial year?***

A Clubs would need to complete two sets of accounts, one for the period up to the transition and the second from the date of the establishment of the Charitable Trust. Would you have to audit one set of accounts and then have a review of the second set, if your turnover is less than \$125,000. It would be more straight forward to complete the transition at the end of the financial year. The paperwork could be established earlier and implemented on 1 January 2022 if clubs had capacity to make the changes in this timeframe.

**Q *How would clubs go about obtaining a New Zealand Business Number?***

A There is a NZBN for every Kiwi business, from sole traders through to large companies. To find out further information you can access it here:

[Sole traders, partnerships and trusts | New Zealand Business Number \(nzbn.govt.nz\)](https://nzbn.govt.nz)

On the NZBN website you need to select what sort of business your applying on behalf of (Charitable Trust). The person completing the application will need a RealMe login, if you do not already have one there is a link on the website to complete this.

The Trust will need to have an IRD number first so clubs will need to apply to the IRD for a number for the Trust. Additional information required includes Trustee details (including full names and the date that they were appointed trustee), you may also be asked for a copy of an identity document for one of the Trustees (NZ drivers licence or passport) and you will need to upload a copy of the club Trust Deed.

**Q** *When will there be a clear answer and how is the board making the decision?*

**A** Below is the timeline that the Board are working to. The Board will consider all feedback, alongside the legal advice and recommendations from BoardWorks and Sport New Zealand. Once a decision has been made all clubs will be advised and provided with further information on next steps.

March – May 2021	Club consultation
May – June 2021	Board review
July – August 2021	Finalise way forward
September – October 2021	Finalise documentation
October 2021 – October 2022	Implement changes – clubs and SONZ to transition to new structure

**Q** *The timelines look a bit tight, does the Board think that these are achievable?*

**A** At this stage the dates in the table above are the Board’s best estimate of what we think can be achieved. Once we receive feedback from clubs and understand the possible direction we might be heading in, this will help determine whether or not the above timeline is realistic.

### **ADDITIONAL QUESTIONS**

**Q** *Can SONZ develop a position description for a trustee, something that would be a one page document, nice and simple and straight forward?*

**A** Yes, we have put this on the list of future documents to be prepared for clubs if the proposal goes ahead.

**Q** *Can SONZ provide a template on how to complete the Charities Commission annual return online? Something like a step by step guide?*

**A** Yes, we have put this on the list of future documents to be prepared for clubs if the proposal goes ahead.

**Q** *How do clubs change their current registered charity number to be a registered charitable trust with the Charities Commission?*

**A** As above, we will look into this and come back to clubs with advice on what is involved.