

Conversations

GET IN TOUCH ONLINE    

we say

"Drivers need to drive to the wintry conditions, especially in the wet and around all the road works happening all over the district."

you say

"I can't believe the small but significant number of drivers who seem to refuse, forget or don't have working headlights on while driving."

Options for governance entities

ALAN KNOWSLEY



LEGAL MATTERS

If a group of people have a mutual interest and want to set up a legal entity to receive funds from grants to run events, there are various legal entities they can choose from.

The different structures provide different levels of involvement and liability, have different tax outcomes and some are better for receiving grants than others.

Some of the key features of common governance structures for organisations,

both charitable and non-charitable, are:

CHARITABLE TRUSTS

Key features:

- Must be set up for a charitable purpose, being the advancement of religion, education, the relief of poverty and other purposes that benefit the community.
- Governed by trustees, who generally have limited liability provided they act prudently and not for personal gain.
- Registered with the Registrar of Incorporated Societies (and Charities Services in some cases).
- Trustees can incorporate as a Charitable Trust Board to allow the Board to contract on its own, otherwise the trustees contract in their own names on behalf of the Trust.
- Governing document is its trust deed, which is registered with the Registrar of Incorporated Societies and publicly available.
- Likely to be phased out as an

option for new organisations within the next few years by the proposed changes to the Incorporated Societies Act.

■ The trustees run the trust to benefit the beneficiaries and to further the charitable purpose.

COMPANIES

Key features:

- Governed by directors, who generally have 'limited liability'.
- Shareholders own the shares in the company and have voting rights and rights to receive dividends.
- Governing document is its constitution, which is registered with the Companies Office and publicly available. If there is no constitution, then the Companies Act governs the company instead.
- You can enter into a shareholders' agreement (which is a private agreement between the shareholders which covers things like what happens if a shareholder passes away), but

this is not compulsory.

■ Can be registered as charitable if it has charitable purposes.

INCORPORATED SOCIETIES

Key features:

- Suited to not for profit organisations whose members have a common interest.
- Can have a charitable purpose and be registered as charitable.
- There is a minimum number of initial members (15).
- Governed by a set of rules, which are registered with the Registrar of Incorporated Societies and publicly available.
- Decisions are made by members.
- Surplus assets are generally distributed among members or to other societies (unless charitable).
- The legislation that covers these is currently under review.

LIMITED PARTNERSHIPS

Key features:

- There is one "General

CONTACT

If you have a legal inquiry you would like discussed in this column please email Alan on alan.knowsley@raineycoltine.co.nz

Partner" and at least one "Limited Partner". The General Partner is in control of management of the partnership. ■ Governing document is a partnership agreement, which is registered with the Companies Office and publicly available. ■ The Limited Partner must not take part in management of the Limited Partnership. ■ Can be registered as charitable if its purposes are charitable. Make sure you get advice from your lawyer and accountant.

■ Column courtesy of Rainey Coltine Lawyers phone 0800 733 484 or raineyco/ins.co.nz