

'Everything Legal'

With Gerard De Courcy

Downie Stewarts relationship to the YEPT

- Have been involved with the Yellow Eyed Penguin Trust for over 25 years.
- One of our retired partners, Bill Armitage was a member of the group who incorporated the Trust in 1987.

Not for Profit Organisations

Unincorporated
Bodies

Charitable Trusts
Society Based
Trust Based

Incorporated
Societies



Charitable Trusts and Incorporated Societies



Charitable Trust - Charitable Trusts Act 1957	Incorporated Society – Incorporated Societies Act 1908
Not for profit organisation with a charitable purpose	Not for profit organisation where members have a common object/purpose
Generally has to be run in accordance with the Trust Deed and the Trustee Act and the Charitable Trusts Act 1957 and Charities Act 2005	Must be run in accordance with the set of rules it is required to have
The trustees run the trust to advance the charitable purposes or objects	Membership is dictated by the societies rules.
Focus of Trust is on the purpose for which it was set up	Focus of Society is on it's members
Must have a “charitable purpose”	Must have objects which are outlined in the rules.
Minimum of two trustees	Minimum of 15 members

Advantages of Incorporated Charitable Trusts and Incorporated Societies

- Limited liability for members and trustees as the organisation is its own legal entity.
- Organisation is able to enter into contracts, buy property, borrow money in its own capacity.
- Perpetual succession
 - Property of the organisation does not need to be transferred every time a Trustee or board member retires.
- Tax benefits.
 - Registration with the Charities Board



Who has the power?

Charitable Trust

- Run by either the Trustees or a Board if the Trust is incorporated under the Charitable Trusts Act.
- A society based Trust may have a membership.

Incorporated Society

- Run by it's members or 'officers' who are appointed or elected under the Societies rules.
- The rules may also provide for a Committee to be set up to manage the running of the Society.





Legal Duties and Responsibilities

Charitable Trust

- Trustees have various duties;
 - To invest prudently
 - To act in the best interests of the beneficiaries
 - To act in the best interests of the Trust
 - To act in accordance with the Trust Deed

Incorporated Society

- Must provide its annual financial statements to the Registrar
- Must not distribute monetary gains to its members
- Otherwise the current legislation is unclear what duties members of the society have.



Current issues for Not for Profit organisations

- Good financial practices
- Good employment practices
- Good governance – meeting practices
- Insurances
- Health & Safety
- Disciplinary / dispute process
- Outdated legislation

The Future

Charitable Trusts

- Internal Affairs have indicated that there will be law changes that will require Charities with large annual expenditure to have their accounts reviewed or audited by a chartered accountant.

Incorporated Societies

- The Law Commission have released a report which indicates that there is going to be big changes to the law surrounding Incorporated Societies including
 - Setting out basic duties for officers of the society
 - Procedure for disputes and financial conflicts of interest
 - Providing a model constitution

Questions?

