



Stronger Charities.  
Stronger Communities.

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THE WHEEL'S SUBMISSION ON THE LAW  
REFORM COMMISSION'S CONSULTATION  
PAPER: THE LIABILITY OF CLUBS,  
SOCIETIES AND OTHER UNINCORPORATED  
ORGANISATIONS

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# About the Charity, Community and Voluntary and Social Enterprise Sector

Independent, community-based, voluntary organisations have long played a key role in supporting and advocating with and for people and communities in Ireland. Indeed, it is often through the initiative and advocacy of self-organising communities that many community, health and social care services have been initiated.

Community and voluntary organisations are involved in every community in the country, providing health and social supports, services and advocacy on behalf of people with disabilities, older people, young people, children, people experiencing poverty and disadvantage, and people at every stage of their lives.

Since 2020, the COVID-19 pandemic has demonstrated the extent to which we rely on the community and voluntary sector, especially in difficult times. These organisations played a key part in sustaining communities during the crisis, demonstrating their core role as part of Ireland's public service infrastructure. They restructured services to deliver remotely, responded to the need for socially-distanced and safe provision, cut costs, redirected resources to priority areas and designed new service responses targeted at meeting emergent need.

The community and voluntary sector constitutes a significant social economy within the broader economy. It comprises almost 35,000 community, voluntary and charitable organisations; involves over 86,481 volunteer directors and trustees; directly employs 165,000 people; and manages income of €14.2bn per year. These organisations raise over half of this income (more than €8.3bn) themselves, majorly subsidising the cost of public services in Ireland. Indecon Economic Consultants (in a report published by the Charities Regulator in 2018) estimate that the total direct, indirect, and induced value of the work of Ireland's charities exceed €24bn per annum and supports 289,000 employees.

Many of these are unincorporated and that is why the outcome of the LRC consultation exercise is so important for the community and voluntary sector. In order to protect the valuable work of these organisations and their members, any reform must ensure that there is no disproportionate negative impact for unincorporated associations.

## About The Wheel

The Wheel is Ireland's national association of community and voluntary organisations, charities and social enterprises. We are the representative body for this vibrant and diverse sector and, together with our members, we shape and promote conditions in which people and their communities thrive.

We passionately believe that community and voluntary action improves and enriches communities and society. Our simple but ambitious mission is to make Ireland a fair and just place for all by strengthening the capacity and capability of community and voluntary organisations, charities and social enterprises to play their part. We do this by representing these organisations, supporting these organisations to do their work, and promoting the importance of the voluntarism and community values that power these organisations. The Wheel has more than 2,000 members and provides support services and representation on behalf of these members relating to matters that reflect their collective interests.

# Clubs, Societies and Unincorporated Organisations in the Community and Voluntary Sector

The charity, community and voluntary, and social enterprise sector in Ireland is diverse, vibrant and essential to the social and economic wellbeing of the wider population. The Law Reform Commission's (LRC) consultation paper is of significant importance to many of The Wheel's members, who vary widely in size, mission, area of work and funding models. Many of our members remain unincorporated for different reasons, including the flexibility and egalitarian, non-hierarchical structure that this form facilitates. These organisations will be impacted by any changes to legislation or policy that may emerge from the Report.

The LRC Report notes that "According to the 2020 Annual Report of the Charities Regulator, there were 11,426 registered charities, of which 2,476 were unincorporated bodies registered as charities as of 31 December 2020. According to the 2021 Annual Report of the Charities Regulator, there remained 11,426 registered charities, of which 1,622 were unincorporated associations registered as charities as of 31 December 2021".

We appreciate the opportunity to contribute to this discussion at an early stage and hope to present some **useful background information on the community and voluntary sector in Ireland**, some **comments on the LRC objectives**, as well as some **concerns that we have about the potential impact of the proposed models**. Due to the multifarious impact that any changes are likely to have on the different types of organisations that we represent, we have opted to present our submission in this way, rather than answering all of the detailed and specific questions posed by the Commission at this point in time. We hope to have the opportunity to contribute further as reform progresses.

## Summary

Whilst we acknowledge that there is a need to improve the current legislation, it is important that changes do not have a negative impact on the vibrant and varied landscape of community and voluntary activity in Ireland. In order to reach a satisfactory model for reform it will be necessary to truly understand the diversity and the contribution of the charity, community and voluntary, and social enterprise sector, a significant proportion of whom are unincorporated. Some points of central importance to our members are that:

- Civil society organisations in Ireland should not be compelled to incorporate. The LRC acknowledges that this would be a "blunt measure" that has been used in non-democratic countries to "curtail civil society groups and undermine freedom of association and dissent". We would agree with this and strongly advise against any burdensome registration process
- Any new system should be proportionate to the size, role, funding model, charitable status and purpose of a particular organisation
- The compliance burden on charities and community organisations is not increased
- There is a mechanism to address any unintended consequences of changes to the law
- Organisations are not precluded from obtaining insurance through increased premiums or reduced options
- There is awareness of the progress of other legislation and its interaction with this area of law (Co-operatives Bill, Charities Amendment Bill) in terms of regulatory burden, impact on an

organisation's legal status, and the potential of these Bills to address many of the issues identified in this consultation.

## Law Reform Commission Objectives

A close reading of the Report has highlighted the many issues that exist in the current legislative/regulatory approach. We understand that changes may be necessary to achieve clarity and access to justice in certain areas of the law. We note that the LRC proposes nine reform objectives and we have included some comments on these:

- a) The objective of bringing clarity to the law on unincorporated associations

The Report indicates that the main principles of law are in fact mostly clear. It is the consequences that are not well appreciated and can be difficult to work through

- b) The objective of protecting the interests of third parties dealing with unincorporated associations

We would question the necessity of this objective. Why not *caveat emptor*?

- c) The objective of providing that the assets of an unincorporated association are available to meet its responsibilities

We acknowledge that this is a real issue, but believe it could be more effectively addressed for charitable trusts through amendments to trust law

- d) The objective of providing that unincorporated associations can be sued in their own names

We agree that this would be helpful on balance (rather than the current situation where trustees or members can be sued) but only if it is not premised on unincorporated associations being compelled to incorporate or register. This would effectively eradicate the flexibility and informality that the form offers. In instances where trustees want protection from being individually sued, we believe they should incorporate as limited companies

- e) The objective of clarifying the law on personal liability of members

While we agree with this generally, we would question whether it is a significant or urgent enough issue to warrant widespread reform

- f) The objective of clarifying the applicability of existing legislation to unincorporated associations

We disagree with this objective if it necessitates a blanket solution and believe that a case by case approach may be more appropriate

- g) The objective of ensuring that existing legislation is enforceable in respect of unincorporated associations

We agree that unincorporated associations should not be outside the enforceability of existing law, but, again, only if it is not premised on unincorporated associations being compelled to incorporate or register, effectively destroying the flexibility and informality of the form

- h) The objective of removing the impediment to suing a club of which you are a member

Again we would question the necessity of addressing this issue. Why not *caveat socium*? Our concern is that this might become an instance of hard cases making bad law

- i) The objective of minimising regulatory burdens.

We agree strongly with this objective but note that this will be hard to achieve when increasing the laws applicable to unincorporated associations

# Comments on LRC Proposed Models

## Model 1

*Legislate to create a “non-profit registered association”, by which separate legal personality could be gained by registration*

We do not feel that the proposals in Model 1 would provide an appropriate, proportionate or effective solution to the objectives outlined in the LRC Report. Our main concern with this model is that it would amount to a kind of enforced incorporation, which we do not believe is appropriate for all entities.

It is also likely that this model would increase the regulatory burden on organisations. Despite the LRC’s emphasis on avoiding this, there are currently significant delays for charities to register with the Regulator, despite an increase in funding and staffing, and this would constitute a major additional undertaking. There is no precedent to date for reliance on the Regulator reducing compliance for those it engages with.

We feel it is unclear how this in-between measure would benefit currently unincorporated associations, as it represents an added layer of formality with none of the protections of incorporation, such as limited liability. We think it unlikely that this kind of legal personality would capture the right kind of unincorporated associations around whom issues are arising.

## Model 2

*Confer separate legal personality on unincorporated associations that fulfil specified criteria*

Our concerns about Model 2 are similar to those of Model 1. While we acknowledge that this would be less onerous than Model 1, introducing any registration system that relies on the Regulator would undoubtedly bring additional administrative requirements for organisations and likely delays. Furthermore, the automatic attribution model could result in further complexity or lack of clarity for volunteer trustees, resulting in many of the problems detailed above.

The spectrum of unincorporated associations in Ireland is also very broad and it would be difficult to agree any appropriate criteria for automatic attribution of any new status to all.

Finally, it is notable that this model has the most significance for the principle of freedom of association, as it confers automatic status on any group that falls under the chosen criteria.

## Model 3

*Do not confer separate legal personality but specify how unincorporated associations are to be held liable in contract, tort and for offences, with a series of focused reforms that do not alter the legal status of unincorporated entities*

Model 3 would be our preferred approach for reform. This is the sole proposal which satisfies the objective of minimising regulatory burden objective and would not affect organisations indiscriminately. It comprises targeted, necessary solutions for which justification has been presented. The other models are far-reaching, sector-wide proposals for which we do not believe there is sufficient justification in the Report.

Although this option still raises some concerns, we see a benefit to addressing the problems detailed at the beginning of the LRC Paper without conferring new legal personality on unincorporated associations. Constraining the time and energy of legislators to real, pressing issues and cases rather than theoretical ones is a preferable approach to take. This would avoid unnecessary compliance for organisations who do not wish to incorporate while creating legal protections where they are needed. Targeted solutions would also, we believe, have a better chance of achieving timely change. This is therefore the solution likely to be most effective.

We also suggest that some of the issues be addressed through other pieces of legislation not referenced in the Report. For example, amendments to trust law for land-holding issues relating to non-charitable unincorporated associations and amendments to the Charities Act for issues with restricted charitable purpose trusts.

As with the first two models, it is important that any change, especially around liability, is communicated to unincorporated associations and that the objectives of proportionality, clarity and minimising regulatory burdens are adhered to. There will also be a need to acknowledge and address the costs and complexities that will accompany the introduction of any changes for charitable organisations.



## Other General Concerns for Members of The Wheel

As the representative body for charities, community and voluntary organisations and social enterprises in Ireland, we recognise the wide-ranging implications of this area of law for our members. Each model proposed in the consultation paper is likely to affect our various members in different ways. However, there are some more general concerns we would like to highlight that will have an impact across the sector.

### Increased compliance and regulation

The state rightly invested heavily in recent years in developing regulations and compliance processes for charities, including establishing and funding the Charities Regulator. However, there has been no equivalent investment to support the capacity of charities to comply. More pointedly, many funding programmes from state agencies specifically exclude use of any allocated monies for necessary compliance work associated with these contracts. In addition, expansion and duplication of reporting information across state bodies and agencies exacerbates the situation.

The Wheel's recent [member survey](#) shows that organisations across the sector must report a wide range of information to multiple statutory agencies and bodies. **More than half of respondents were required to report the same compliance data to multiple sources, but fewer than 20% of these organisations have dedicated compliance staff**, demonstrating the significant challenge that these organisations face in meeting requirements. There is a clear need for the streamlining of compliance requirements and dedicated funding for compliance costs by statutory funders.

Increased and under-funded compliance requirements are also making it increasingly difficult for community and voluntary organisations to recruit trustees. These voluntary trustees are often responsible for keeping up with regulation and compliance on behalf of charities, whose paid staff often do not have enough capacity.

These requirements are additional to any associated with incorporation and demonstrate the difficult compliance landscape in which many charities currently exist. **It is vital that any model developed for unincorporated associations in Ireland does not place an additional administrative burden on these organisations, as many would simply not have the capacity to comply while also providing their full range of services and supports.**

### Lack of access to insurance

The unsustainable rise in insurance costs nationally has had and continues to have a very serious effect on many charities, community and voluntary organisations, and social enterprises. The Wheel has worked as part of the Alliance for Insurance Reform (AIR) to ensure that community and voluntary organisations can continue to carry out their vital work in the face of significant insurance barriers. Despite some progress and instances of government reform, many community and voluntary organisations are still struggling to keep providing important services and supports as a result of high insurance costs and a limited market.

**Our concern is that any change in the law around liability of unincorporated associations, especially conferring distinct legal personality, would further exacerbate the insurance problem faced by many community and voluntary groups, charities and social enterprises.**

While it may be impossible to predict whether an increase in litigation will occur from any changes made to the legal status of unincorporated associations, there is a precedent for insurance companies to increase premiums regardless. For some organisations, further increases could be devastating and mean closing their doors for good, depriving many of important services.

## Increased complexity

Trustees and staff members of registered charities in Ireland already operate in a landscape of significant legal complexity. Those who wish to register as CLGs then face a plethora of additional requirements.

Our own surveys and those of the Charities Regulator demonstrate that there is also limited understanding among the general public about the legal structures that define charities, CLGs, community groups etc. **While we acknowledge that many of the proposals in the LRC Report seek to bring clarity to this area of law, there is a concern that some might in fact make the whole system even more opaque.** Many smaller organisations might not see this as relevant to themselves at all, or might fail to understand the implications of any changes to the law. An active information campaign on the part of the Charities Regulator would need to be a prerequisite to any reform to ensure compliance with any new system.

In particular, we have concerns that the registration systems proposed in Model 1 and Model 2 – either compulsory, voluntary or automatic – would cause confusion for many organisations leading to non-compliance.

## Chilling effect on freedom of association

The ultimate outcome of all the concerns detailed above would be a general chilling effect on civil society in Ireland. The LRC acknowledges that “Irish life has been, and is, characterised by voluntary associations of people, from the earliest clans, tribes and settlements to the formation of villages and towns across Ireland” and that “The social importance of unincorporated associations in Ireland is significant because many sporting and social clubs in local communities in Ireland are organised as unincorporated associations. Such associations contribute a large amount of public good in culture, recreation, social justice, civil and human rights”.

We would add that they also contribute significantly to the economy and many are involved in providing vital services and supports to the most vulnerable in our society. **Freedom of association is a central human right and a cornerstone of social and civic life in Ireland.**

Many of our unincorporated members are small in size and would struggle with the administrative requirements of incorporating as a CLG or registering in some form as proposed in Models 1 and 2. They are already struggling with significant regulatory compliance requirements and a complex landscape of relevant legislation. Volunteer trustees of charitable organisations are being asked to take on increasing amounts of risk, and this is already making it difficult to recruit appropriate and diverse board members across the sector.

## Proportionality

As noted above, the LRC report states that “According to the 2020 Annual Report of the Charities Regulator, there were 11,426 registered charities, of which 2,476 were unincorporated bodies registered as charities as of 31 December 2020. According to the 2021 Annual Report of the Charities Regulator, there remained 11,426 registered charities, of which 1,622 were unincorporated associations registered as charities as of 31 December 2021”.

It is clear then that the number of unincorporated organisations operating in the community and voluntary sector is significant at between 10 to 15% . We believe that this status is crucially important for many types of organisations. Furthermore, the vast majority of these organisations are relatively small.

It is important that any **reforms remain proportionate to the problems that are actually occurring**. While there are clearly some important cases driving reform, we believe there is a risk of negative impact on organisations for whom these issues are not relevant.

The broad spectrum of unincorporated associations cannot be treated the same in many of these areas of law. For example, members of charitable unincorporated associations do not and cannot beneficially own charitable property (even if there are incidental benefits not inconsistent with charitable status). Members of non-charitable unincorporated associations hold property in a different way.

It is also not evident that some of issues being addressed are particularly urgent or significant issues that warrant widespread reform. We would suggest **the inclusion of relevant and proportionate impact as a desired objective** of any changes made to this area of law.

## **Conclusion**

We appreciate the opportunity to feed into this important discussion. Many unincorporated associations operating in the community and voluntary sector contribute significantly to social and cultural life in Ireland and it is important that their role is fully understood by those leading on any reform. Any changes to their definition or legal personalist should be in full consultation with the organisations themselves. We hope that any developments will take into consideration the concerns detailed above and work towards a satisfactory solution for all parties.

We look forward to further engagement with the LRC on these issues and welcome contact or questions at any time.

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