

REPORT 1
31 May 2008

Charitable Purposes and Tax Compliance Systems Programme

RESEARCH AND LEGAL ADVICE

Preliminary research on the legal framework affecting Maori charitable entities under the Charities Act 2005 and the Income Tax Act; an outline of the scope and scale of Maori charitable entities affected by the legal framework; and an overview of the generic risks to Maori charitable entities.

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Final:



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Purpose

The purpose of this report is to fulfil requirements of Output 1 in the Investment Agreement (“Agreement”) dated 1 May 2008 between Te Puni Kokiri and FOMANA Capital Ltd. Schedule C of that Agreement sets out the reporting requirements for this Report:

Short Term Outcome	Output 1	Due Date
An informed understanding of the scale of affected Māori entities under the Charities Act 2005.	Preliminary research and legal advice obtained.	31 May 2008

Scope

The scope of this report is to provide a high level overview of:

- the legal framework affecting Māori charitable entities under the Charities Act 2005 and the Income Tax Act;
- the scope and scale of Māori charitable entities affected by the legal framework; and
- generic risks to Māori charitable entities.

Format

The report format has four sections plus appendices.

<i>Executive Summary</i>	<i>Summary of key information</i>
<i>Section 1</i>	Legal framework affecting Māori charitable entities under the Charities Act 2005 and the Income Tax Act
<i>Section 2</i>	Scope and scale of Māori charitable entities affected by the legal framework
<i>Section 3</i>	Generic risks to Māori charitable entities

Report Objectives

The objective is to provide an informed understanding of the scale of affected Māori entities under the Charities Act 2005.

Acknowledgements

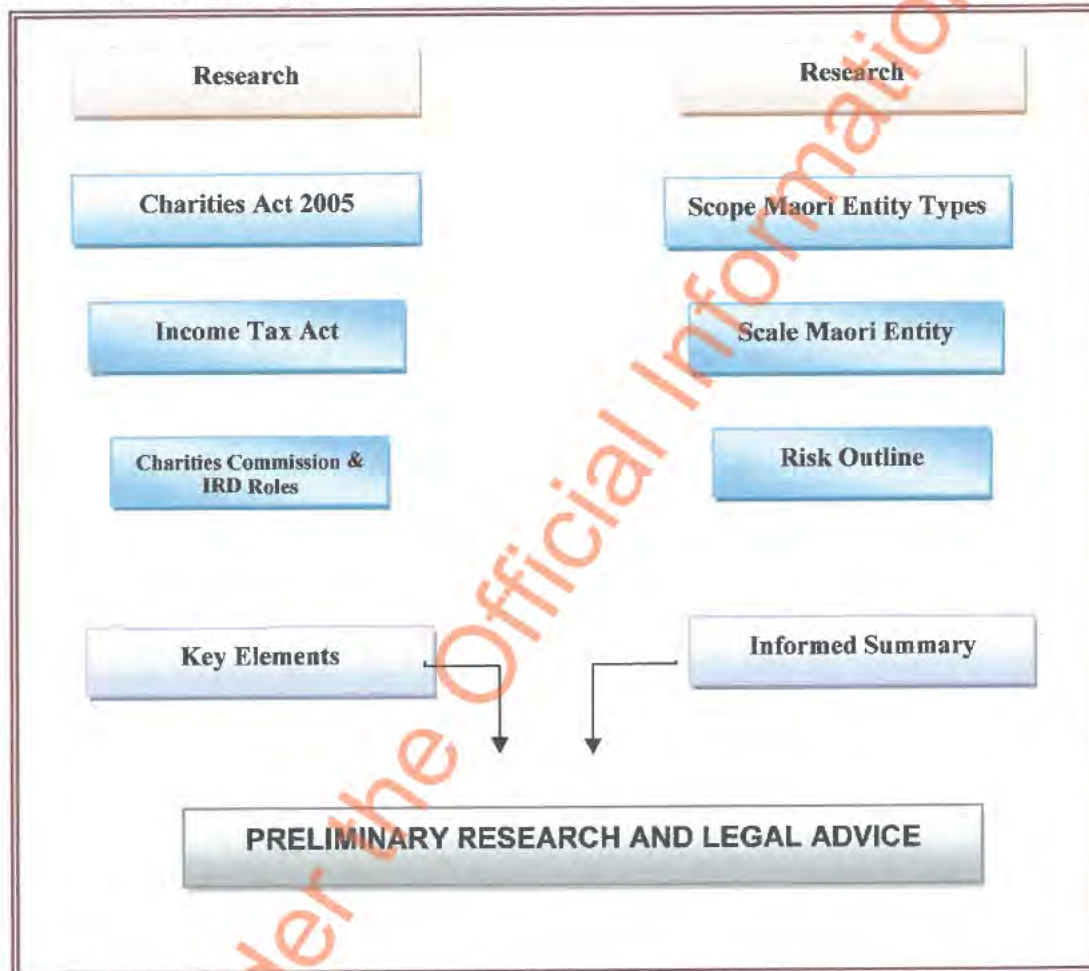
FOMANA would like to acknowledge Te Puni Kokiri for supporting this project. We thank the staff at IRD and also acknowledge the Charities Commission for the meetings held. We truly appreciate the feedback provided by Anne Broughton of the Charities Commission. Finally, we acknowledge the 8 Māori entities that are part of a pilot programme to develop a greater understanding of charitable purposes, which have strategically committing to prepare tax exempt assurance and beneficiary training systems.

Methodology

The methodology has two research aspects.

1. research the Charities Act 2005, Income Tax Act (year) and identify key elements that may affect Māori charities.
2. research the scope and scale of Māori entities that may be affected by Charities Act 2005.

Diagram 1: Methodology



Limitation

This report is limited to providing Te Puni Kokiri an overview and should be seen as the first of the body of knowledge that is being developed over two-years. This report does not provide in any detail the monitoring regime of the Charities Commission, the auditing role of the Inland Revenue Department, or detailed statistics on Māori charitable entities, or any specific risk profiles.

Disclaimer

This report is an overview of the legal framework under the Charities Act and its interface with the Income Tax Acts. It is prepared for Te Puni Kokiri only. It does not purport to provide specific legal advice for any entity on their legal obligations under either legislative enactment, and it should not be relied upon by any entity accordingly.

Outputs

The following table outlines the outputs for this and the next two reports.

Short Term Outcome	Output 2	Due Date
An informed understanding of the scale of affected Māori entities under the Charities Act 2005.	Research reports completed on generic risk for Māori entities with charitable status.	30 Sept 2008
	Output 3	
	Detailed research report completed on the requirements of the new charities and tax compliance framework.	30 Sept 2008
	Output 4	
	Research report and profile completed on each pilot entity outlining areas at risk of compliance with the charities / tax regime.	30 Sept 2008

Definitions

For the purposes of this report, the following working terms and definitions are used:

Māori charitable entities	Legal entities that are registered or eligible for registration with the Charities Commission and which are majority owned by Māori or whose members or beneficiaries, the majority of which are of Māori descent.
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the Act	Means the Charities Act 2005
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the Commission	Means the Charities Commission
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Executive Summary

- The Charities Commission (“the Commission”) was established by the Charities Act 2005 (“the Act”). The Commission came into existence as an Autonomous Crown Entity on 1 July 2005. The establishment of the Commission was a response to the need for increased regulation of the charitable sector through the creation of an independent body.
- The government considers the Act will help build and maintain public trust and confidence in the charitable sector by making more information available about charities. The Commission was established amongst others to do the following to determine, register, provide advice, monitor charities, provide education and support to the charitable sector, encourage good practice in governance and the use of resources in charitable organisations.
- Registration with the Commission is voluntary; from 1 July 2008 an entity must have qualified as charitable, and be registered to be eligible for tax exempt status. That exemption applies to:
 - exemption from income tax for non business income;
 - exemption for business income derived by or in support of charities;
 - exemption from gift duty for persons who make gifts for charity.
- The Inland Revenue will continue to administer the tax exemptions available to charities and decide whether donations to a charity are eligible for rebates and deductions.
- The Commission will decide if an organisation qualifies for registration as a charity.
- A charitable entity must operate within its charitable purposes.
- The Commission uses the well established common law test for charitable purposes.
- According to that test the rules of an organisation must clearly state that its purposes are for one of the following:
 - relief of poverty.
 - advancement of education.
 - advancement of religion.
 - any other matters that is beneficial to the community.
- A charitable entity can be in breach of its empowering documents by making dispositions of funds held by it in the following ways:
 - by applying the funds to a purpose outside the charitable purposes stated in the empowering documents.
 - by applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients.
- The consequences of such a breach could include the following:
 - the Commission may take enforcement proceedings against the officers of the entity;
 - the Commission may deregister the entity;
 - the Inland Revenue if it detects an ultra vires transaction must report it to the Minister of Revenue;
 - if the breach involves a trust there is the risk of legal action against the trustees by the Attorney General;
 - adverse publicity against the officers of the entity.
- The Inland Revenue can seek to impose taxes on the amounts of income misapplied.

- If charitable status was lost then tax would be applied at the rate of 33% /39% plus recovery of penalties and interest.
- The scope of Māori entities that are impacted by the Charities Act 2005 is wide ranging.
- The potential impact because of non-compliance, limited or no systems in place to illustrate compliance with charitable purposes raises significant risks. The following types of entities (structures) have been identified.
 - Māori Trust Boards (Maori Trust Boards Act 1955);
 - Marae on Māori reservations (Te Ture Whenua Māori Act 1993);
 - Statutory Maori entities (with charitable purposes);
 - Mandated Iwi Organizations - MIOs (Māori Fisheries Act);
 - Fisheries Asset Holding Companies (Māori Fisheries Act);
 - Te Kohanga Reo National Trust (and affiliated Kohanga Reo);
 - Kura Kaupapa Māori (Education Act 1989);
 - Māori Charitable Trusts;
 - Māori societies or institutions (established for charitable purposes);
 - Te Ture Whenua Trusts and community purposes Trusts (MLC).
 - Marae - not a Māori reservation;
 - Subsidiary Companies to asset holding companies (refer Māori Fisheries Act 2004);
 - Māori Societies or Institutions (companies) established for charitable purposes;
 - Māori Land Trusts and Maori Incorporations (Te Ture Whenua Maori 1993). Where it includes trusts to spend for: Māori community purposes - as defined in Te Ture Whenua Māori 1993. Example of types: Ahu Whenua Trust; Whenua Topu Trust; Kaitiaki Trust; Whanau Trust; Putea Trust.
 - Māori Associations (Māori Community Development Act 1962);
 - Waka Umanga.
- Initial research illustrates seven risk profiles.
 - operating outside “charitable purposes” as per Trust Deed or Rules;
 - misappropriation of Trust funds;
 - misapplication of Trust funds;
 - penalties applied by IRD for failure to comply with charitable purposes;
 - de-registration by the Charities Commission;
 - loss of tax exemption status;
 - loss of reputation.
- Mitigations first requires an in-depth understanding of the obligations of charitable purposes (tax exemption) and then up-skilling Māori entities through the provision of information, policies, training and systems to reduce the likelihood of non-compliance.
- The taxation issue is really about the risk to Māori charities of losing their tax exempt status through failure to operate according to their “charitable purposes”. In the worst case, loss of tax exemption status will see many Māori charities face insolvency through massive tax bills, possibly back-dated with penalties applied by IRD.

Section 1: Legal framework affecting Maori charitable entities under the Charities Act 2005 and the Income Tax Act

Introduction

Section 1: examines the following:

- Establishment of the Charities Commission;
- Charities Commission role;
- Charities Commission functions/powers;
- Charitable purposes test;
- Consequences of breaching the charitable purposes test;
- Obligations of a charitable entity under the Income Tax Act;
- The interrelationship between the IRD and the Charities Commission in relation to charitable entities.

Section 1: Objective

The objective of this section is to provide the background and to summarise key elements such as roles, functions, relationships and obligations of the Charities Commission and the Charitable Purposes Test.

1.1 Introduction

This section of the paper shall examine the following factors:

- the background to and rationale for the establishment of the Charities Commission;
- the role of the Charities Commission;
- the functions/powers of the Charities Commission;
- the charitable purposes test;
- the consequences of breaching the charitable purposes test;
- the obligations of a charitable entity under the Income Tax Act;
- the interrelationship between the IRD and the Charities Commission in relation to charitable entities.
- the scope and extent of the charities sector in New Zealand.

1.2 The background and establishment of the Charities Commission

The Charities Commission (“the Commission”) was established by the Charities Act 2005 (“the Act”). The Commission came into existence as an Autonomous Crown Entity on 1 July 2005. The establishment of the Commission was a response to the need for increased regulation of the charitable sector through the creation of an independent body. The government considers the Act will help build and maintain public trust and confidence in the charitable sector by making more information available about charities.

1.3 The role of the Charities Commission

The Commission was established to do the following:

- to determine the charitable status of charities (entities);
- to register and monitor charities that wish to keep or obtain tax exempt status;
- to provide education and support to the charitable sector;
- to promote trust in charitable organisations;
- to encourage good practice in governance and the use of resources in charitable organisations;
- to provide advice on matters relating to charities to the Government;
- to promote and to undertake research into matters relating to charities.

Whilst registration with the Commission is voluntary, from 1 July 2008 an entity must have qualified as charitable, and be registered to be eligible for tax exempt status. That exemption applies to:

- exemption from income tax for non business income;
- exemption for business income derived by or in support of charities;
- exemption from gift duty for persons who make gifts for charity.

The Inland Revenue will continue to administer the tax exemptions available to charities and decide whether donations to a charity are eligible for rebates and deductions. The Commission will decide if an organisation qualifies for registration as a charity. It will examine whether an organisation has charitable purposes and whether the organisations name and officers meet the requirements of the Act. It is understood that the IRD will accept the Commission's decision so that registration can in most cases lead to tax exemption.

1.4 The functions and powers of the Commission

The functions and powers of the Commission, as set out in section 10 of the Act, are to:

- promote public trust and confidence in the charitable sector;
- encourage and promote the effective use of charitable resources;
- educate and assist charities in relation to matters of good governance and management;
- make appropriate information available to assist persons to make registration applications under the Act;
- receive, consider and process applications for registration as charitable entities;
- ensure that the Register of Charitable Entities is compiled and maintained;
- receive, consider, and process annual returns submitted by charitable entities;
- supply information and documents in appropriate circumstances for the purposes of the Inland Revenue Acts;
- monitor charitable entities and their activities to ensure that entities that are registered as charitable entities continue to be qualified for registration as charitable entities;
- inquire into charitable entities and into persons who have engaged in, or are engaging in, conduct that constitutes, or may constitute, a breach of the Act or serious wrongdoing in connection with a charitable entity;

- monitor and promote compliance with the Act, including by taking prosecutions for offences against the Act in appropriate circumstances;
- consider, and to report and make recommendations on, any matter relating to charities;
- stimulate and promote research into any matter relating to charities.

1.5 Registration requirements/process

An organisation can register with the Commission if:

- it is established for charitable purposes;
- it is not for the private profit of any individual or group;
- it has a name that complies with the Act;
- all the officers of the organisation are qualified to be officers under the Act.

To register organisations have to:

- complete the prescribed application form, which includes information about their current and proposed charitable activities;
- submit a copy of their rules ,constitution, trust document or similar;
- certify the officers of the organisation by completing a prescribed officer form.

For existing entities that application must be with the Commission by 1 July 2008.

1.6 Charitable purposes

Section 5(1) of the Act defines a charitable purpose as the following:

"includes every charitable purpose whether it relates to the relief of poverty, the advancement of religion, or any other matter beneficial to the community"

A charitable entity must operate within its charitable purposes. The Commission uses the well established common law test for charitable purposes.

According to that test the rules of an organisation must clearly state that its purposes are for one of the following:

- relief of poverty. Examples include caring for the aged, children, orphans, the infirm, blind, war veterans, disabled, discharged prisoners, alcoholics, providing accommodation for the elderly, helping other needy people.
- advancement of education. Examples include providing education through early childhood centres, schools, and universities, scholarship for academic achievement founding and supporting schools technical college and universities, providing museums and libraries, delivering vocational training.
- advancement of religion. Examples include celebrating religious services in public, providing and maintaining grounds and buildings to be used by religious organisations, maintaining burial grounds, providing religious education;
- any other matters that is beneficial to the community.

To be charitable under this category an entities purpose must be:

- very similar to the spirit and intent of the purposes listed in the Statute of Elizabeth or very similar to the charitable purpose listed by the courts;
- be beneficial to the community.

The courts have found the following purposes to be beneficial to the community:

- promoting public health;
- providing public works and services;
- providing public amenities and recreational facilities
- protecting the environment;
- protecting human life;
- preventing cruelty to and protecting the welfare of animals;
- facilitating social rehabilitation¹.

In addition its purpose must not be aimed at creating private financial profit. Section 5 (3) of the Act states that an organisation can have a secondary or supplementary non charitable function as part of its charitable purpose. That non charitable purpose must be:

- ancillary, secondary, subordinate, or incidental to a charitable purpose of the entity;
- not be an independent purpose of the entity.

The Commission have stated they will compare the charitable objects of each entity against those stated in Section 5(1) of the Act and assess each application on a case by case basis. The definition of charitable purposes contained in the Act is different from other legislation such as the Charitable Trusts Act 1957. Notwithstanding these differences the Charitable Trusts Act (and other related legislation) will continue to apply to those entities registered under the Act.

1.7. Consequences of breaching Charitable Purposes Test

A charitable entity can be in breach of its empowering documents by making dispositions of funds held by it in the following ways:

- By applying the funds to a purpose outside the charitable purposes stated in the empowering documents. This action is said to be ultra vires or outside of the rules. This is known as a Purpose Risk.
- By applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients. This is known as a Misapplication Risk.

The consequences of such a breach could include the following:

- The Commission may take enforcement proceedings against the officers of the entity;
- The Commission may deregister the entity;
- The Inland Revenue if it detects an ultra vires transaction must report it to the Minister of Revenue;

¹ Refer to Latimer v Commissioner of Inland Revenue [2002] 3 NZLR 195 for outline of implications as it relates to charitable purpose and Maori, and wider public benefit.

- If the breach involves a trust there is the risk of legal action against the trustees by the Attorney General;
- Adverse publicity against the officers of the entity;
- The Inland Revenue can seek to impose taxes on the amounts of income misapplied. If charitable status was lost then tax would be applied at the rate of 33% /39% plus recovery of penalties and interest.

The establishment of the Commission raises the risk to charitable entities of the following:

- It raises the risk of ultra vires transactions been detected. The Commission is specifically charged with monitoring the ongoing performance of charitable entities;
- It is considered that the Inland Revenue will be more likely to undergo periodic audits;
- The untested nature of the Act and how the Commission will determine serious wrong doing.

1.8 The obligations of a charitable entity under the Income Tax Act

Income tax exemptions are available to trusts, societies and institutions that meet the requirements of the Income Tax Act 2004 in terms of deriving income for charitable purposes. Exemptions from income tax are provided for under section CW 34 (non-business income) and CW 35 (business income) of the Income Tax Act 2004. Under the self assessment regime an organisation must assess for itself whether these income tax exemptions apply to it. Although taxpayers are required to self assess their tax obligations, the practice has been that charities have sought the opinion of the Commissioner of Inland Revenue on their tax status.

In brief, Inland Revenue's operational practice will be:

- entities with non-business income that are registered with the Commission will prima facie qualify for the income tax exemption in respect of that income;
- for entities that derive business income, registration alone will not be sufficient for the business income tax exemption and they must self assess the extent to which their charitable purposes are carried out in New Zealand;
- entities that currently enjoy income tax exemption must register with the Commission by 1 July 2008. Failure to do so will result in the loss of their tax exempt status until they are subsequently registered;
- entities currently listed as donee organisations will continue to enjoy donee status even though they may decide not to register with the Commission;
- newly registered charities will generally not need to make separate application to Inland Revenue for donee status;
- organisations that choose not to become registered charitable entities may still apply to Inland Revenue for approval as donee organisations;
- during the transitional period (from 1 February 2007 to 30 June 2008) charities will retain their existing tax exempt status for income tax, gift duty and resident withholding tax;
- the exemption from gift duty for gifts to charitable trusts, societies and institutions will cease from 1 July 2008 where the entities have not registered with the Commission;
- from 1 July 2008 Inland Revenue will not issue certificates of exemption from resident withholding tax to charitable entities unless they are registered with the Commission;
- charitable organisations are still required to have IRD numbers;

- after 30 June 2008 Inland Revenue will attempt to contact charitable organisations that records show have an exemption from income tax, and have not registered with the Commission, to determine their position; and
- in the past Inland Revenue has suggested there be restrictions in their rules preventing entities from altering certain clauses without prior approval.
- Inland Revenue strongly recommends that organisations remove any requirement in their rules for Inland Revenue to consent to rule changes.

1.9. The relationship between the Commission and the Inland Revenue

Inland Revenue will remain responsible for administering the Revenue Acts and will retain the right to audit charities to ensure they continue to be eligible for tax exemptions. Inland Revenue also remains responsible for assessing the donee status of donations to a charity eligible for rebates and deductions.

Charities registered under the Act are generally eligible for exemptions from income tax on some or all of their income. Once registered they will receive information from the Inland Revenue outlining the exemptions that they are entitled to and what they have to do to comply with requirements for the exemptions.

1.10 General context and scale of the Charitable Sector in NZ

Charitable Sector (page 7): The number of charities in New Zealand is unknown. The recent Counting Non-profit Institutions in New Zealand study released by Statistics New Zealand reported that there were 97,000 non-profit institutions operating in New Zealand in October 2005. However, not all charities were included in that study, with trusts, in particular, excluded.

The Commission knows that there are a large number of trusts in New Zealand. The Commission, when planning for registration, considered the available information and budgeted for 25,000 charities. Given Statistics New Zealand's study that estimate may be light.

As well as having little information on the numbers of charities in New Zealand, knowledge about their financial impacts is also sparse.

Output Class Charities Administration (page 21): It is unknown how many charities will apply to register under the Charities Act, but projections have used a base volume of 25,000 new applications and associated annual returns.

Performance Measures for 2007/08 ²	Standard/Target
Number of charities registered	Up to 18,000

² See Charities Commission Statement of Intent.

Charities Commission Registration Update

Date	Number registered	Processing Time
25 January 2008	2,142	currently reviewing applications received from 29 August.
Feb 2008	3,121	reviewing applications received from early November 2007
29 April 2008 ³	4,990	reviewing applications received from 30 January 2008.
19 May 2008	5,902	Currently making initial reviews of applications received from 26 Feb 08.

Section 1 Summary

The data about charities in NZ is evolving. There could be as many as 100,000 charitable entities.

The Commission's target is to register 18,000 in 2007/2008 but as at 15 May 2008 the Commission had received 11,000 and only registered approximately 5,000 leaving a staggering backlog.

Preliminary Research Findings:

- there is little information on the charitable sector and its size and scope is uncertain;
- all stakeholders in the charitable sector, including the general public, would benefit from the availability of good data on the charitable sector;
- there are opportunities for government agencies to work in partnership with the charitable sector to establish and develop services and promote community development;
- the Commission has a role to educate and assist charities, however, it may be prudent to explore ways by which non-government, including Maori can best add value in educating segments of the community;
- it is highly likely that charities will come under increasing pressure to improve efficiency and accountability, particularly when accessing and accounting for government funding;
- there is a need to coordinate activities between government agencies working with the sector to ensure compliance costs are minimised, and clarify and communicate roles and boundaries to avoid confusion;
- there seems to be a low level of Maori entities that have registered at the time of preparing this report.

³ Update 29 - April 2008

Section 2: Scope and Scale of Maori Charitable Entities

Maori Charitable Entities - Types of Entity

Section 2 has identified numerous types of Maori charitable entities and we have commented specifically on ten. Furthermore we have identified at least twenty one possible sectors.

Section 2: Objective

The objective of this section is to provide an outline of the breadth and depth of Maori entities that could be impacted on by the Charities Act 2005.

Maori Entities

FOMANA has provided a brief commentary on the following ten entities (over page).

1. Maori Trust Boards (Maori Trust Boards Act 1955);
2. Marae on Maori reservations (Te Ture Whenua Maori Act 1993);
3. Statutory Maori entities (with charitable purposes);
4. Mandated Iwi Organizations - MIOs (Maori Fisheries Act);
5. Fisheries Asset Holding Companies (Maori Fisheries Act);
6. Te Kohanga Reo National Trust (and affiliated Kohanga Reo);
7. Kura Kaupapa Maori (Education Act 1989);
8. Maori Charitable Trusts;
9. Maori societies or institutions (established for charitable purposes);
10. Te Ture Whenua Trusts and community purposes Trusts (MLC).

The following entities could also have charitable purposes and therefore be impacted by the Charities Act 2005.

- Marae - not a Maori reservation;
- Subsidiary Companies to asset holding companies (refer Maori Fisheries Act 2004);
- Maori Societies or Institutions (companies) established for charitable purposes;
- Maori Land Trusts and Maori Incorporations (Te Ture Whenua Maori 1993). Where it includes trusts to spend for: Maori community purposes - as defined in Te Ture Whenua Maori 1993. Example of types: Ahu Whenua Trust; Whenua Topu Trust; Kaitiaki Trust; Whanau Trust; Putea Trust.
- Maori Associations (Maori Community Development Act 1962);
- Waka Umanga

Preliminary Research findings (as at 20 May 2008)

Our research provides a brief commentary on the ten types of Maori entities that could be impacted by the Charities Commission Act 2005.

Maori Trust Boards (Maori Trust Boards Act 1955)

Type 1	Maori Trust Board (Maori Trust Boards Act 1955)
Note on charitable status	Boards that have executed a declaration of trust declaring property to be held for charitable purposes, subject to declaration being approved by IRD
Potential Scale	9 current boards
Number registered with Charities Commission	one known: Tuwharetoa Maori Trust Board Registered Date 09/04/2008 Registration number CC22722

Marae on Maori reservations (Te Ture Whenua Maori Act 1993)

Type 2	Marae on Maori reservations (Te Ture Whenua Maori Act 1993)
Note on charitable status	Includes marae situated on Maori reservations where funds used only to administer and maintain marae for charitable purposes.
Potential Scale	683 Marae listed on Maori.org.nz website ⁴ Unknown how many of these are situated on Maori reservations
Number registered with Charities Commission	24 Marae registered (with Marae in name of entity) Only 17 of these listed as being in Maori reservation sector (See Appendix)

⁴ http://whakapapa.maori.org.nz/email_marae_rohe.asp

Statutory Maori entities (with charitable purposes)

Type 3	Statutory Maori entities (with charitable purposes)
Note on charitable status	<p>Partial tax exemption status for:</p> <ul style="list-style-type: none"> • Te Runanga o Ngai Tahu Act 1996 • Te Runanga o Ngati Awa 2004 <p>Statutory Charitable Trusts:</p> <ul style="list-style-type: none"> • Ngati Rarua Te Atiawa Trust
Potential Scale	Estimate is 10 - 20 but could increase if future Treaty settlement legislation allows for establishment of charitable entities alongside commercial entities
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

Mandated Iwi Organisations – MIOs (Maori Fisheries Act)

Type 4	Mandated Iwi Organisations - MIOs (Maori Fisheries Act)
Note on charitable status	Approval of MIO constitutional documents with charitable purposes by Te Ohu Kaimoana
Potential Scale	43 with MIO status out of 56 iwi at Aug 07 ⁵
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

⁵ <http://teohu.maori.nz/iwiregister/overview>

Wholly-Owned Subsidiary Companies

Type 5	Wholly-owned Subsidiary Companies (eg. Asset Holding Companies under Maori Fisheries Act - eg. Wholly owned subsidiaries of Ngati Awa)
Note on charitable status	Wholly owned companies of Mandated Iwi Organisations for Fisheries Settlement purposes may be registered as charitable entities if parent organization (MIO) is charitable.
Potential Scale	43 with MIO status out of 56 iwi at Aug 07 ⁶ assumption of same number of asset holding companies. Unknown how many other wholly owned subsidiaries of charitable parent entity.
Number registered with Charities Commission	

Te Kohanga Reo National Trust

Type 6	Te Kohanga Reo National Trust (& affiliate Kohanga Reo)
Note on charitable status	Te Kohanga Reo National Trust has charitable status for non-business and business activities, income tax exemption, and also has donee status. This means that Kohanga reo affiliated under the tutohinga (charter) are not required to file income tax returns.
Potential Scale	501 licensed Kohanga as at July 2005 ⁷
Number registered with Charities Commission	National Trust registered and 19 other Kohanga Reo registered as at 20 May 2008. (See Appendix)

⁶ <http://teohu.maori.nz/iwiregister/overview>

⁷ <http://educationcounts.edcentre.govt.nz/statistics/downloads/Web%20Time-Series%20-%20Licensed%20ECE%202005.xls>

Kura Kaupapa Maori (Education Act 1989)

Type 7

Kura Kaupapa Maori (Education Act 1989)

Note on charitable status

- Kura kaupapa are classified as centres bound by the Education Act 1989 and its constitution. Under this Act, Kura kaupapa are exempt from income tax, but may have to pay other taxes.
- State and state integrated schools are exempt from income tax under the Education Act (Schedule 6, clause 2). State and state integrated schools *do not* need to register with the Charities Commission to remain exempt from income tax for school operations.

Potential Scale

66 Kura Kaupapa as at July 2006⁸

Number registered with Charities Commission

Need to confirm that Kura Kaupapa do not need to register.

Note: The Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Bill 2008 provides that tertiary education institutions and state and state integrated schools need not register with the Charities Commission.

Maori Charitable Trusts

Type 8

Maori Charitable Trusts

Note on charitable status

National, Regional or local Māori, Iwi, Hapu, or whanau entities established as Charitable Trusts:

- He Oranga Pounamu Charitable Trust

Potential Scale

Probably the largest group of Maori charitable entity and will cover wide range of sectors, particularly health and education.

Likely to number well above 500 and may be closer to 1000.

Within Health alone, there are 240 Maori Health providers listed on Min of Health website as at 20 May 2008 and a number of separate Maori PHOs that are also charitable.

Number registered with Charities Commission

Unknown and difficult to tell from Search of Register

Needs further research

⁸ <http://educationcounts.edcentre.govt.nz/statistics/schooling/maori-medium-education-at-july06.html>

Maori Societies or Institutions (established for charitable purposes)

Type 9	Maori societies or institutions (established for charitable purposes)
Note on charitable status	For example National or pan- Māori entities (and affiliate members) <ul style="list-style-type: none"> • Maori Women’s Welfare League Inc.
Potential Scale	Potentially hundreds
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)

Type 10	Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)
Note on charitable status	Charities Commission may be able to register trusts established under <i>Te Ture Whenua Māori Act 1993 (Māori Land Act 1993)</i> if they can clearly show they have a charitable purpose. An order of the Māori Land Court won't be automatically accepted as proof of charitable purpose under the Charities Act. The Commission will review the terms of the order and the trust deed in relation to the definition of "charitable purpose" in the Charities Act and assess every organisation's application on a case-by-case basis to decide whether it has a charitable purpose.
Potential Scale	Unknown and difficult to tell from Search of Register Needs further research using Maori Land Court records and Charities Commission data
Number registered with Charities Commission	Example of Ahuwhenua Trust East Taupo Lands Trust Charitable Trust ⁹ Registered Date 08/05/2008: Registration number CC24040

⁹ [East Taupo Lands Trust Charitable Trust](#)

Sectors In Which These Entities Operate

The following sectors are those used by the Charities Commission in its Application Form 1 and in its online Register. Examples of Maori charitable entities have been identified to illustrate the breadth of sectors in which these entities operate. Further research to obtain quantitative data to enable a fuller understanding of the sectors in which Maori charitable entities operate will assist in identifying potential risk areas and compliance issues.

<i>Sector</i>	<i>Example of Maori charitable entity registered with Charities Commission</i>	<i>(Registration No)</i>
1. Accommodation / housing	Ngati Pahauwera Kaumatua Trust	CC22209
2. Education / training / research	<ul style="list-style-type: none"> Southern Maori Development Charitable Trust 	CC10999
3. Kohanga Reo	<ul style="list-style-type: none"> Hineteiwaiwa Te Kohanga Reo 	CC23106
4. Health	Te Kahui Hauora O Ngati Koata Trust	CC21237
5. Environment / conservation	Wai Care Environmental Consultants Whangaroa	CC24478
6. Marae on reservation land	Otenuku Marae Maori Reservation	CC21086
7. Community development	Ngati Mutunga Community Development Charitable Trust	CC23076
8. Emergency / disaster relief		
9. Social services	He Matapuna Ora Charitable Trust Board	CC22962
10. Employment		
11. Religious activities	Kei Runga I Nga Parirau O Te Ekara	CC20680
12. Arts / culture / heritage		
13. Sport / recreation	Te Hua Rangatahi Trust	CC23675
14. Care / protection of animals		
15. International activities		
Sector	Example of Maori charitable entity registered with Charities Commission	(Registration No)
16. Economic development	Ngati Kahu Corporate Ltd	CC11424

17. Fund-raising

18. Disability

19. Promotion of volunteering	Mauri Tu Mauri Ora Charitable Trust Board	CC20091
20. Providing funding to the ultimate parent entity for application to charitable purposes	Ngati Awa Fish Quota Holdings Limited	CC11026-4
21. 20. (Sec 24 & Sec 24A of the Maori Trust Boards Act 95 & Sec 6 of the Te Runanga o Ngati Whatua Act 1988 state the objects and purposes of the Trust which encompasses all of those items ticked in box 14)	<p>Te Runanga o Ngati Whatua</p> <p>part of Te Runanga O Ngati Whatua Group comprising:</p> <p style="text-align: center;">Charity Name</p> <p>Te Runanga o Ngati Whatua</p> <p>Te Topu Ika o Ngati Whatua</p> <p>Ngati Whatua Fisheries Limited</p>	CC23982

Section 2 Summary Overall potential scale of Maori Charitable Entities

There appears to be a low incidence of registrations by Maori Charitable Entities. This research shows that the scope and scale of Maori entities affected by the Act is potentially significant. There are at least ten entity types and a potentially over twenty sectors in which Maori are or could be involved in charitable purposes.

Maori Trust Boards (Maori Trust Boards Act 1955)	9
Marae on Maori reservations (Te Ture Whenua Maori Act 1993)	400
Statutory Maori entities (with charitable purposes)	20
Mandated Iwi Organisations - MIOs (Maori Fisheries Act)	50
Wholly-owned Subsidiary Companies eg. AHCs (Maori Fisheries Act)	80
Te Kohanga Reo National Trust (and affiliated Kohanga Reo)	500
Kura Kaupapa Maori (Education Act 1989)	60
Maori Charitable Trusts	700
Maori societies or institutions (established for charitable purposes)	600
Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)	100

Approx 2,519

Section 3: Generic Risks

Section 3: Objective

The objective of this section is to provide an outline of the potential risks.

Seven Risk Profiles

We have identified seven risk profiles. These are:

1. operating outside “charitable purposes” as per Trust Deed or Rules
 - a. ultra vires placing enormous risk on trustees and the trust.
2. misappropriation of Trust funds
 - a. applying the funds for purposes which were not approved and do not benefit the organisation. This would amount to criminal activity
3. misapplication of Trust funds
 - a. applying funds for other purposes (which may benefit the members) but are not applied as approved. This could result in the trustees being in breach of the trust deed.
4. penalties applied by IRD for failure to comply with charitable purposes
 - a. financial penalty -may require back payment and interest.
5. de-registration by the Charities Commission
 - a. removal from the charitable register
6. loss of tax exemption status
 - a. loss of tax exemption
7. loss of reputation
 - a. public odium

Mitigations

- reducing liabilities by providing trustees and leaders of Māori entities with an in-depth understanding of their obligations in relation to the charitable purposes and preservation of charitable status for tax compliance.
- Up-skilling Māori entities through the provision of information, policies and training at two levels, firstly for key members in their entity and secondly for beneficiaries.
- developing systems to reduce the likelihood of non-compliance in IRD audit investigation.
- improving the quality of data and standards for compliance.

Section 3 Summary

- The taxation issue is really about the risk to Maori charities of losing their tax exempt status through failure to operate according to their “charitable purposes”.
- The risk of losing an existing tax exemption status is very high if there is only a minimal understanding of what constitutes “charitable purposes”.
- In the worst case, loss of tax exemption status will see many Maori charities face insolvency through massive tax bills, possibly back-dated with penalties applied by IRD.
- In other cases, loss of tax exemption status will reduce the income to such an extent that the Maori charity will be unable to continue to provide the services it currently delivers.
- In all cases, loss of tax exemption status will cause reputational damage to the Maori charity, adverse media attention, and loss of goodwill and potential income from donee or grant organisations.
- The legislative framework affecting Maori charities encompasses compliance with the provisions of a number of Acts including:
 - Charities Act 2005;
 - Charitable Trusts Act 1957;
 - Trustee Act 1956;
 - Incorporated Societies Act 1908;
 - Companies Act 1993;
 - Income Tax Act 2004;
 - Te Ture Whenua Maori Act 1993;
 - Waka Umanga Act (currently before government).

Appendix of Marae (Maori Reservation Sector) registered with Charities Commission as at 20 May 2008

Using search on word "Marae"

Charity Name	Registration		
	Number	Status	Date
1. Arohanui Ki Te Tangata Marae	CC24453	Registered	16/05/2008
2. Kaiuku Marae	CC11069	Registered	11/09/2007
3. Karangahape Marae Association Incorporated	CC22287	Registered	31/03/2008
4. Karangahape Marae Trust	CC21720	Registered	12/03/2008
5. Mangaiti Marae Trust	CC23740	Registered	02/05/2008
6. Maungarongo Marae Trustees	CC24565	Registered	20/05/2008
7. Ngai Tupoto Marae Trustees	CC20190	Registered	06/12/2007
8. Ngatiwai O Aotea Kawa Marae Trust	CC22867	Registered	11/04/2008
9. Ngunguru Marae	CC20877	Registered	01/02/2008
10. Otenuku Marae Maori Reservation	CC21086	Registered	13/02/2008
11. Rangiahua Marae	CC22796	Registered	10/04/2008
12. Taiharuru Marae Incorporated	CC21686	Registered	11/03/2008
13. Taihoa Marae	CC21681	Registered	11/03/2008
14. Te Maata Marae Trust	CC20193	Registered	06/12/2007
15. Waiaua Marae Trust	CC20210	Registered	10/12/2007
16. Whaakirangi Marae	CC22960	Registered	15/04/2008
17. Whakamarama Marae Society Incorporated	CC20997	Registered	08/02/2008

Appendix of Kohanga Reo registered with Charities Commission as at 20 May 2008

Using search on word "Kohanga Reo"

Charity Name	Registration		
	Number	Status	Date
1. Hineteiwaiwa Te Kohanga Reo	CC23106	Registered	17/04/2008
2. Ki Ohau Kohanga Reo	CC23098	Registered	17/04/2008
3. Kia Tau Te Rangimarie Te Kohanga Reo	CC23460	Registered	28/04/2008
4. Nga Tau E Toru Te Kohanga Reo	CC23762	Registered	02/05/2008
5. Nga Tikanga Pono Kohanga Reo Society Incorporated	CC23034	Registered	16/04/2008
6. Takaputiraha Kohanga Reo	CC23223	Registered	21/04/2008
7. Tarimano Kohanga Reo	CC23178	Registered	18/04/2008
8. Te Hau Ora Kohanga Reo Trust	CC24507	Registered	19/05/2008
9. Te Kohanga Reo Atawhai O Te Ahu - Turanga-I-Mua Incorporated	CC23734	Registered	02/05/2008
10. Te Kohanga Reo Ki Rotokawa	CC24154	Registered	09/05/2008
11. Te Kohanga Reo National Trust Board	CC11324	Registered	11/10/2007
12. Te Kohanga Reo O Maanuka	CC23906	Registered	05/05/2008
13. Te Kohanga Reo O Murihiku	CC22219	Registered	28/03/2008
14. Te Kohanga Reo O Nga Kuaka Incorporated	CC24523	Registered	19/05/2008
15. Te Kohanga Reo O Te Hikuwai	CC23694	Registered	01/05/2008
16. Te Puawaitanga Te Kohanga Reo	CC23749	Registered	02/05/2008
17. Te Rakau Kowhai O Nga Tamariki te Kohanga Reo	CC22216	Registered	28/03/2008
18. Tumanako Rawhiti Te Kohanga Reo	CC22142	Registered	27/03/2008
19. Waikawa Te Kohanga Reo	CC23818	Registered	05/05/2008
20. Waimeha Te Kohanga Reo	CC23939	Registered	06/05/2008

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Released under the Official Information Act 1982