

Charitable Purposes and Tax Compliance Systems Programme

A Training Toolkit for Māori Charities in the application of the
FOMANA Charities Compliance Model ©



*Whakataka te hau ki te uru
Whakataka te hau ki te tonga
Kia mākinakina ki uta
Kia mātaratara ki tai
E hī ake ana te atākura
He tio, he huka, he hau hū
Tihei Mauri Ora.*

Mihi and Acknowledgements

FOMANA acknowledges the funding and contract management support provided by Te Puni Kōkiri for the Charitable Purposes and Tax Compliance Systems Pilot Programme over a two year period. Thanks also to key managers at the Charities Commission and Inland Revenue Department who have provided advice and information to support and enhance the integrity of the programme. We acknowledge with thanks the high quality advice and service provided by consultants, Rangimahora Reddy and Peter Doolin, whose professional expertise added mana and value to the programme.

FOMANA gives special thanks to the members of the Māori Entity team and Governance and management leaders of the eight Māori Charitable entities for their commitment to the pilot programme. It has been a privilege to work alongside your organisations to build a deeper understanding of charities and tax compliance among your membership and wider Māori communities, particularly at the marae level. Thank you for your willingness to participate in the pilot, to share knowledge and personal experiences so that other Māori charities may benefit through the future delivery of this programme.

Tenei te mihi nui ki a koutou katoa.



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Thanks to Piri Hira Tukapua of Taitoko Design & Print Ltd who is responsible for the stunning design work in this toolkit. Her original koru design is inspired by the whakatauki: *E hara taku toa i te toa takitahi, engari he toa takitini*. My strength derives from many, not just one. In Piri Hira's own words, "the oval part is the group/organisation, nurturing and growing together. The koru that reaches out represents charity/open-handed."

The background kete photo was taken by Kim Skelton. The kete raranga is part of Kim's taonga kete collection and was gifted to her by her late grandmother, Lulu Skelton.

Disclaimer

This Training Toolkit was developed for use by Māori charities. It was piloted in October 2009 by eight Māori Charitable entities participating in the Charitable Purposes and Tax Compliance Systems Pilot programme. It does not purport to provide specific legal advice for any entity on their legal obligations under or relating to the Charities Act 2005, the Income Tax Act 2007 and or any other relevant legislation and or case law. It should not be relied upon by any entity accordingly.

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Section 1

Introduction

- 1.1 Background and overview of FOMANA Pilot Programme for Māori charities
- 1.2 Pilot Programme participants (8 Māori charitable entities)
- 1.3 Training Objectives



Section 1: Introduction

1.1 Background and overview of FOMANA Pilot Programme for Māori charities

1.2 Pilot Programme participants (8 Māori charitable entities)

1.3 Training Objectives

1.1 Background and overview of the FOMANA Pilot Programme for Māori charities

In August 2007, FOMANA Capital Limited recognised that an estimated 2,500¹ Māori charitable organisations would be affected by the Charities Act 2005, with a potential loss of tax exemption if those charities did not apply for registration with the Charities Commission by 1 July 2008.

FOMANA put together a proposal for a pilot programme with up to eight committed Māori charitable entities. The aim of the Charitable Purposes and Tax Compliance Systems programme is to assist the eight participating Māori charitable entities to:

- (a) increase their capability and understanding of the new charities and tax compliance regime;
- (b) protect their tax exemption status; and
- (c) provide quality assurance systems to their organisation, beneficiaries and stakeholders.

FOMANA approached key charitable sector agencies including IRD, Charities Commission, Office for the Voluntary and Community Sector and Te Puni Kōkiri to seek support for conducting the programme. The proposed programme was received positively by all the agencies, in particular by the Relationships and Information Directorate at Te Puni Kōkiri, who agreed to fund the programme over two years across three phases:

May – Sept 2008	Phase 1:	Research on Charities & Tax Compliance
Oct 08 – July 2009	Phase 2:	Risk Profiling and Systems Applications Models
Aug 09 – Mar 2010	Phase 3:	Training & Systems Adoption (for 8 Māori charitable entities)

¹ See table showing potential scale of Māori charities in FOMANA Preliminary Research Report One, 31 May 2008, page 22

This Training Toolkit was piloted in five training workshops held in October 2009. Based on feedback from those workshops and trainer observations, it has been refined and adapted to enable delivery to other Māori charities on a regional or national basis. It is intended primarily as a training workshop resource for hands-on use at training sessions and maximum value will be gained by those who are able to attend and participate in the training rather than simply reading the toolkit.

For those who wish to learn more about the background and context to the pilot programme or to gain a deeper understanding of charitable purposes and compliance, the authors recommend that you read the full series of reports and case studies produced as part of the pilot programme:

Report One:	Preliminary Research	31 May 2008
Report Two:	Research Report	30 September 2008
Report Three:	Risk & Audit Report	31 March 2009
Report Four:	Case Studies Report	31 July 2009
Report Five:	Training Toolkit version 1	September 2009
Report Six	Training Delivery Report	15 December 2009

The Reports are available on request from FOMANA Capital Ltd, info@fomana.co.nz.

1.2 Pilot Programme participants (8 Māori charitable entities)

Eight Māori charitable entities participated in the pilot programme. FOMANA acknowledges and expresses thanks to each of these charities for their continued commitment and positive participation in the programme. We particularly wish to thank the key contacts in each organisation for sharing their experiences, their knowledge and information so that other Māori charities could benefit. This is particularly evident in the Case Studies, which are intended to convey a broad range of experiences and challenges faced by Māori charities and also to highlight policies and practices that may assist other charities to benchmark their own practices and to maintain compliance with their charitable purpose.

Profile of the eight Māori charitable entities²

Legal Name of Entity	Māori Entity Team Key contacts for pilot	Charities Commission Register No. Registration date	Type of entity - Nature of activities	Size based on Income levels ³
4 Iwi entities				
Ngati Rarua Atiawa Iwi Trust Board (NRAIT)	John Charleton	CC 20248 13 Dec 2007	Statutory entity - Tribal lands management	Medium
Taranaki Iwi Trust	Tokatumoana Walden, Kerry Walsh	CC 39750 30 June 2008	Mandated Iwi Organisation (MIO) - Fisheries management	Medium
Te Atiawa Ki Te Upoko o Te Ika A Maui Potiki Trust	Morrie Love, Peter Reweti	CC 38312 30 June 2008	Mandated Iwi Organisation (MIO) - Fisheries management	Small
Te Kaahui o Rauru	Darryn Ratana, Hayden Potaka, Pania Winterburn	CC 34302 30 June 2008	Representative entity for Ngaa Rauru Kiitahi Iwi - Iwi development and tribal asset management	Large
4 Health entities				
Taranaki PHO Ltd (Hauora Taranaki PHO)	Pauline Cruikshank	CC 21526 4 March 2008	Primary Healthcare Organisation (PHO)	Large
Te Aroha Medcare Ltd	Hayden Wano	CC 32243 30 June 2008	General Practitioner Service	Medium
Te Rau Pani Māori Mental Health Trust	Hinemoerangi Ngatai Tangirua	CC 10717 30 July 2007	Specialist Māori Mental Health Service Provider	Medium
Tui Ora Ltd	Hayden Wano	CC20369 7 January 2008	Māori Development Organisation - Health	Large

³ Small (income under \$100,000); Medium (Income between \$100k - \$2.5m), Large (Income over \$2.5m) as per the descriptions outlined in The Review of the Financial Reporting Act Discussion Document Part II

1.3 Training Objectives

1.3.1 Purpose of Training

To provide training in the application of the FOMANA Capital Charities Compliance Model© to governance, staff and other key stakeholders of Māori charities. The Model, comprises seven interlinked elements and has been especially designed to assist Māori charities to:

- increase understanding of their charitable purpose and general legal obligations;
- assess their organisational risks in relation to these obligations; and
- put in place management systems to ensure compliance with their Constitution and legal obligations.

1.3.2 Training Outcomes

Participants will increase their knowledge and understanding of the seven elements of the Model, in particular:

1. **Constitution and NZ Law:** the core charitable purposes in their own Constitution and their general legal obligations;
2. **Charitable Purposes:** “charitable purposes” and the four heads of charity;
3. **Stakeholders:** their accountability duties to their stakeholders;
4. **Charities Commission and Registration:** their legal obligations under Charities Act to maintain registration;
5. **IRD and Tax Exemption:** their taxation obligations to maintain income tax exemption;
6. **Policies-Processes-People:** the policies, procedures and people needed to maintain charitable purposes compliance;
7. **Risks:** the key risks and consequences and risk mitigation strategies.

1.3.3 Training Methodology

Training is delivered by way of an interactive workshop (minimum 1 day). Each participant is given a copy of this Training Toolkit to use in the workshop, for action planning, and later as a personal reference book. Trainers are expected to use various presentation methods appropriate to the audience and to tailor the workshop to meet the particular needs of the Māori charitable organisation.

1.3.4 Who should attend the Training workshops?

Each organisation will need to determine which of its members will most benefit from this training. It is recommended that the participants include a mix of governance, management and key stakeholders to enable a wider appreciation of the compliance challenges over the different parts of the organisation. Based on the experience of the pilot programme, a smaller group of 10 to 15 persons is recommended to provide maximum opportunity for workshop discussions and sufficient time to answer questions. The trainers and participants in the pilot programme found that free-flow, yet facilitated discussions, added greatly to their overall learning and knowledge acquisition.

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Section 2

FOMANA Charities Compliance Model©

- 2.1 Overview of FOMANA Charities Compliance Model
- 2.2 Diagram of Model
- 2.3 Application of Model in Training
- 2.4 Definition of terms



Section 2: FOMANA Charities Compliance Model©

2.1 Overview of FOMANA Charities Compliance Model
2.2 Diagram of Model
2.3 Application of Model in Training
2.4 Definition of terms

2.1 Overview of FOMANA Charitable Purpose Compliance Model©

The FOMANA Charitable Purpose Compliance Model comprises the concept and intellectual property that weaves together seven constituent elements into a comprehensive charities compliance programme. It is designed in particular for Māori charities to ensure charitable purpose compliance and the retention of income tax exemption.

The seven elements are:

1. Constitution and NZ Law
2. Charitable Purposes
3. Stakeholders
4. Charities Commission and Registration
5. IRD and Tax Exemption
6. Policies – Processes - People
7. Risks

2.2 Diagram of FOMANA Charities Compliance Model



2.3 Application of Model in Training

The CORE of the Model is the fundamental starting position for charitable compliance, that is, the rules in your Constitution and your legal obligations under NZ law.

Each of the six subsequent outer rings links back to the central core, serving as a visual aid and reminder that all activities of the charitable entity must be consistent with the constitution, and its charitable purpose. The outermost ring is a RISK zone and illustrates that the further a charity goes from its charitable purpose, the greater the risk of non-compliance.

Sections 3 – 9 of this training toolkit provide more detail on each of the seven parts of the Model are presented and discussed in the Training workshops in three parts:

- Part One: Knowledge and Information
- Part Two: Workshop Session
- Part Three: Action Plan

2.4 Definition of terms

The following definitions are used in this Training Toolkit:

Term	Definition
Board	Includes boards of directors, trustees, or other governance entity
Charities Act	Charities Act 2005
Commission	Charities Commission
Charitable Purpose	as defined in section 5(1) of the Charities Act 2005 includes: “...every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.”
Constitution	Governing document setting out the organisation’s purpose and objects and the rules for how it will operate, including matters such as the powers and duties of its officers.
Governance	Governance is about the direction and control of an organisation. Governance is about leadership and making decisions in the interests of the shareholders or beneficiaries. Governance requires strategic thinking skills to give shape to the future of the organisation. ⁴
Governors	Includes company directors, trustees, members of the charity’s governing body who are referred to as “Officers” on Charities Register. Governors focus on the big picture, not the fine detail or day-to-day matters. They give direction to management.
IRD	Inland Revenue Department
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.

⁴ Te Puni Kokiri Good Governance Guide, Chapter 2

Term	Definition
Policy	A deliberate plan of action to guide decisions and achieve a rational outcome(s).
Procedure	A series of prescribed steps followed in a definite regular order which ensure adherence to the guidelines set forth in the Policy to which the Procedure applies.
Risk	The chance of something occurring that will, should the event occur, have an impact on the achievement of organisational objectives. It is measured in terms of the likelihood of something happening and the consequences if it happens.
Reputation Risk	The risk of damage to the organisation's credibility and reputation.
Compliance Risk	The risk of failing to meet government laws, regulations and standards.
Risk Management	A systematic and logical process of identifying, analysing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process in a way that will enable an organisation to minimise losses and maximise opportunities.
Stakeholders	Those individuals, groups, institutions etc (either internal or external to the organisation) who are or perceive themselves to be affected by a decision or activity.

Add any other terms here you would like to define:

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Section 3

Constitution and NZ Law

3.1.1 Know your Rules

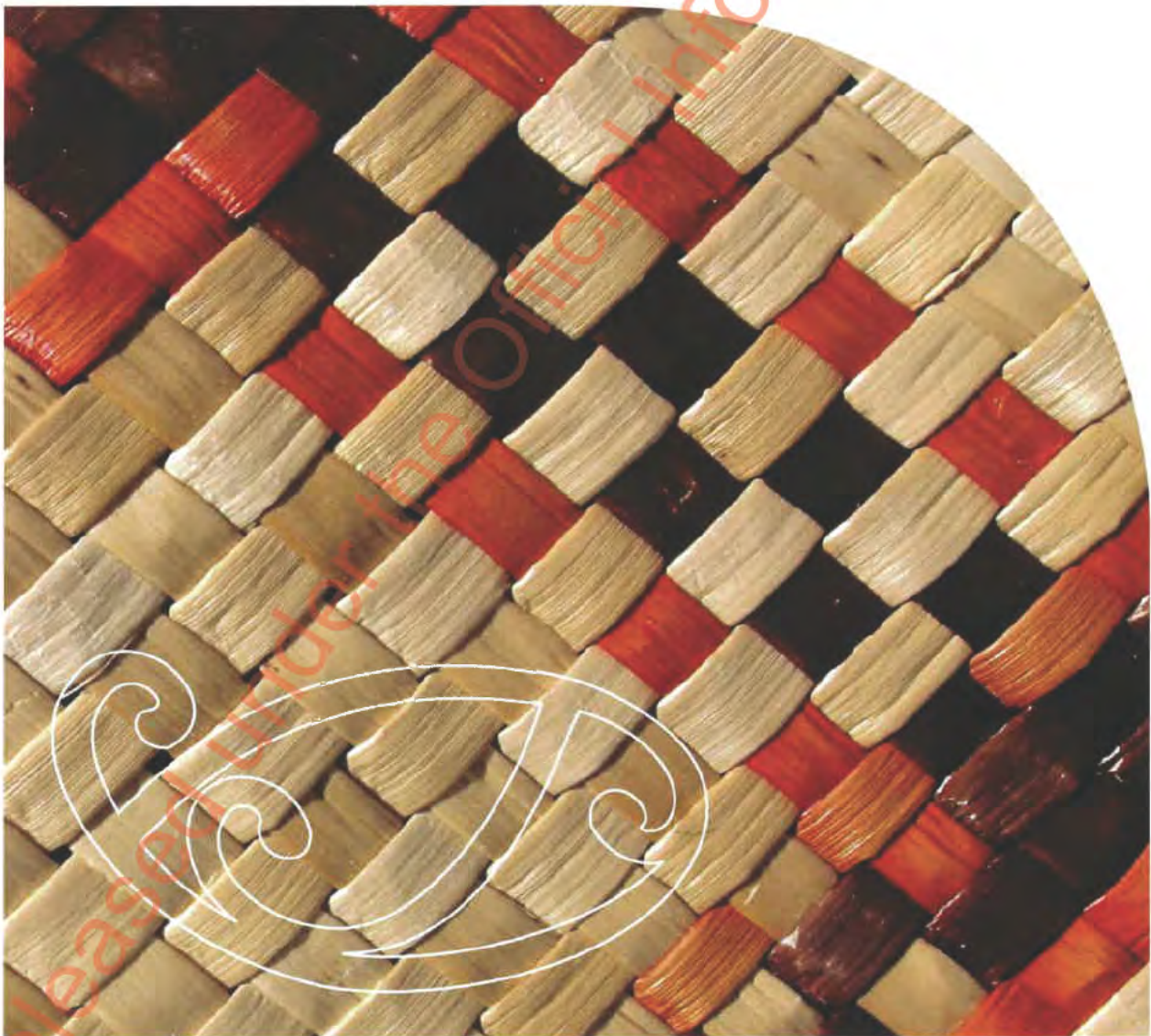
3.1.2 Duties and legal obligations of Trustees / Directors

3.1.3 Rules and Charitable Purposes requirement

3.1.4 Breaches of Trust or failure to act lawfully

3.2 WORKSHOP SESSION

3.3 ACTION PLAN



Section 3: Constitution and NZ law

3.1 KNOWLEDGE & INFORMATION

Constitution and	3.1.1 Know your Rules
NZ Law	3.1.2 Duties and legal obligations of Trustees and Directors
	3.1.3 Rules and Charitable Purposes requirement
	3.1.4 Breaches of Trust or failure to act lawfully

3.1.1 Know your Rules

It is no accident that the Constitution is at the centre of the Model Diagram. It is the starting point and critical element for this compliance system. The Constitution formally establishes the organisation and will usually contain the rules for operation, although these may be in a separate document. The Rules will include:

- purpose / objects rules (charitable purposes must be clear and unambiguous);
- powers and duties of governors (including any limitations on exercise of those powers);
- meetings and voting procedures, appointment/election/removal of governors;
- reporting rules and stakeholder accountability procedures;
- rules for changing the Constitution and winding up provisions (for charitable purposes).

The **Duty to know (and obey) the Trust Deed** is one of the paramount legal duties of a Trustee. This duty is strongly reflected in Rule 6 of the NZ Trustees Association Code of Conduct.⁵

Rule 2: An appointed Trustee must uphold the lawfulness and integrity of the appointment.

Before accepting appointment a member shall review the Trust Deed together with all other legislation & documents setting out the terms and conditions, powers and responsibilities of the appointment. The Trustee should not accept an appointment without being able to provide the appropriate skills and time to execute the required functions in a prompt, efficient businesslike manner. The Trustee must be familiar with and comply with all legislative requirements affecting their appointment.

⁵ <http://www.nzta.org.nz/codeofconduct.html>

3.1.2 Duties and legal obligations of Trustees and Directors

In addition to knowing and adhering to the rules in your own Constitution, Trustees and Directors must abide by general duties imposed by common law and by relevant statutes:

Duties of Trustee ⁶	Duties of a Company Director ⁷
<p>Fiduciary Duties</p> <ul style="list-style-type: none"> • Duty to act in the interests of the Trust, consistent with trust rules and powers; • Duty of loyalty - to achieve the charitable purposes is paramount. <p>Duties of Care, Skill and Diligence</p> <ul style="list-style-type: none"> • Duty to act with reasonable care and skill, that is, to exercise the care and skill that a "prudent" businessperson would exercise in managing other people's affairs; • Duty to act impartially and fairly towards beneficiaries (may favour one charitable purpose over another); • Duty to disclose personal interests and to avoid a position of conflict of interest; • Duty to act personally and <u>not</u> delegate responsibilities except as expressly provided in Trust Deed; • Duty to take expert advice before making own decisions honestly and in good faith; • Duty to act unanimously in decision making or by majority according to Trust Deed; • Duty to <u>not</u> make a personal profit from Trust Funds (No private pecuniary gain); • Duty to invest promptly and prudently; • Duty to keep proper accounts and supply full information to beneficiaries. 	<p>Statutory Duties</p> <ol style="list-style-type: none"> 1. Duty to act in good faith and in the company's best interests at all times; 2. Duty to exercise their powers for a proper purpose; 3. Duty to exercise the care, diligence and skill that a reasonable director would exercise in the circumstances, taking into account the nature of the company, the decision and the nature of the responsibilities; 4. Duty to record the basis on which important decisions are made and to retain supporting information on which decisions are based (if question of compliance arises) 5. Duty to disclose interests which are listed in company's interest register as well as being disclosed to board and shareholders. <p>Directors must not:</p> <ul style="list-style-type: none"> • act or agree to the company acting in a manner that contravenes the Act or the company's constitution; • make use of or disclose any confidential information relating to the company; • agree to, cause or allow the company's business to be carried out in a way that is likely to create a substantial risk of serious loss to the company's creditors (so-called "reckless trading"). • agree to the company incurring an obligation unless the director believes on reasonable grounds that the company will be able to perform it. <p>The solvency test</p> <p>Directors must abide by a two-step test at all times:</p> <ol style="list-style-type: none"> 1. The company must own more assets than liabilities. 2. The company must be able to pay all its accounts as they fall due. <p>Note: A constitution will have no effect if it contravenes the Companies Act 1993.</p>

⁶ Various sources including Trustee Act 1956 and Keeping it Legal, Fact Sheet 4 on Trusts and Charitable Trust Boards

⁷ Obligations as a Director, www.companies.govt.nz and <http://keepingitlegal.net.nz/learn-more/companies/>

3.1.3 Rules and Charitable Purposes requirement

For the purposes of registration under the Charities Act 2005, the Charities Commission does not require specific wording in your rules. However, it must be satisfied that your organisation:

1. has a charitable purpose that falls within one of the four purposes set out in section 5(1) of the Charities Act;
2. provides a public benefit; and
3. is not carried on for the private pecuniary (financial) benefit or profit of an individual.⁸

“Charitable purpose” as defined in section 5(1) of the Charities Act includes: “. . . every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.” The meaning of charitable purposes relies on case law (decided by the Courts). Section 4 of the toolkit looks in detail at the four purposes (4 heads of charity) and what purpose are considered to be “beneficial to the community”.

3.1.4 Breaches of Trust or failure to act lawfully

Trustees are generally liable (jointly and severally) for the trust property and assets of the Trust. The beneficiaries can sue any trustee(s) for any loss incurred by improper or negligent acts of the trustee(s). The Attorney-General may also bring a High Court action against the trustee(s). The Court will deal harshly with trustees who wilfully, corruptly, or negligently apply trust funds; or fail to exercise proper due diligence in their duties. Trustees will be held personally and strictly liable to make good to the trust any losses arising from:

- using trust money for their own personal purposes;
- the destruction of any trust property;
- selling trust property without authority;
- acting negligently in allowing others to misappropriate trust property.

As well as ordering a trustee to make good any losses suffered by the trust, the Court has the power to remove a trustee if clear misconduct is proved (section 51 Trustee Act). For more information on personal liability of trustees, see Keeping it Legal Fact Sheet on Trusts and Charitable Trust Boards.⁹

⁸ Charities Commission Information Sheet “Your rules and the Charities Act” updated April 2008, <http://www.charities.govt.nz/guidance/rules.html>

⁹ <http://keepingitlegal.net.nz/learn-more/trusts/#trusts>

3.2 WORKSHOP SESSION

Constitution and
NZ Law

3.2.1 Checklist Exercise - How well do you know your organisation and laws that apply to it?

KEEPING IT LEGAL (KIL) Brochure 1: Legal Responsibilities of Voluntary Organisations in NZ
*Ignorance of the law is no defence to failing to comply with it. It's therefore important to identify the laws and regulations that apply to your organisation. You should also regularly review all your policies and procedures to make sure they take into account both changes to laws and regulations and changes in your organisation itself.*¹⁰

KIL Reference

Do you know what the legal form of your organisation is? – unincorporated group – incorporated society – trust – charitable trust board – company	Yes	No or unsure	KIL Brochure 2 Legal form
Do you know what matters are dealt with in your constitution, rules or trust deed? – requirements for annual meetings – size of committee and how it's elected – voting requirements (such as proxies) – allocation of tasks and responsibilities of officers – ability to change the constitution – appointment and exit procedures – property dealings – authorising contracts – annual reporting – financial reporting	Yes	No or unsure	KIL Brochure 2 Legal form
Do you know if your organisation has charitable status?	Yes	No or unsure	Brochure 2 Legal form
Do you understand the powers and obligations of members and decision-makers in these areas? – liability – ability to enter into binding contracts – authority to act for the organisation – legal administrative requirements – managing conflict of interest	Yes	No or unsure	Brochure 2 Legal form
Do you know about the legislation that applies to: – people in your organisation? – your organisation's clients and consumers? – your organisation's activities? – your organisation's premises and environment?	Yes	No or unsure	Brochure 3 Laws you need to know
Do you understand about civil liability (e.g. negligence and defamation) and criminal liability (e.g. criminal nuisance)?	Yes	No or unsure	Brochure 3
Do you have policies and procedures in place to ensure that your organisation complies with its responsibilities?	Yes	No or unsure	Brochure 4 Keeping on track
Do you understand about civil liability (e.g. negligence and defamation) and criminal liability (e.g. criminal nuisance)?	Yes	No or unsure	Brochure 3
Do you have policies and procedures in place to ensure that your organisation complies with its responsibilities?	Yes	No or unsure	Brochure 4

Note: Any No or Unsure answers should prompt some Action in your Action Plan

¹⁰ Acknowledge source material from Keeping It Legal http://keepingitlegal.net.nz/wp-content/uploads/2009/07/01_KIL_BRO.pdf

WORKSHOP SESSION

Constitution and

NZ Law

3.2.2 Benchmark Exercise - Rate your organisation's performance or compliance against the benchmarks in Hallmark 2: A strong board

Hallmark 2: A strong board

An effective charity is run by a clearly identifiable board or trustee body that has the right balance of skills and experience, acts in the best interests of the charity and its beneficiaries, understands its responsibilities and has systems in place to exercise them properly.

In order to demonstrate this, the charity:

RATING FOR YOUR CHARITY

a. ensures that the trustee body is constituted in accordance with the governing document;	1. Not compliant 2. Sometimes compliant 3. Always compliant
b. identifies the mix of skills, knowledge and experience necessary for the efficient and effective administration of the charity and ensures that the recruitment and appointment of new trustees provides adequate opportunities for re-assessing and achieving that mix;	1. Not achieved 2. Sometimes achieved 3. Always achieved
c. has a trustee body that is the right size for the charity – large enough to include the skills and experience needed to run the charity effectively, but small enough to allow effective discussion and decision making;	1. Not achieved 2. Sometimes achieved 3. Always achieved
d. has a clear understanding of the respective roles of the trustee body and staff with role descriptions for trustees and charity officers (such as the Chair and Treasurer);	1. Not achieved 2. Sometimes achieved 3. Always achieved
e. ensures that the charity's committees, staff and agents have clear and appropriate delegated authority to carry out their designated roles in delivering the charity's purposes. It also has systems in place to monitor and oversee the way in which delegated powers are exercised;	1. Not compliant 2. Sometimes compliant 3. Always compliant
f. undertakes all appropriate checks to ensure that a prospective trustee is both eligible and suitable to act in that capacity. NZ Charities must complete Officer Certification Form under Charities Act	1. Not compliant 2. Sometimes compliant 3. Always compliant
g. identifies and meets the individual induction, training and development needs of trustees and has in place a framework for evaluating board and trustee performance;	1. Not achieved 2. Sometimes achieved 3. Always achieved
h. ensures its trustees understand that they must act only in the charity's interests and that any conflicts of interest are identified and managed;	1. Not compliant 2. Sometimes compliant 3. Always compliant
i. identifies and complies with relevant legislation and takes professional advice where necessary.	1. Not compliant 2. Sometimes compliant 3. Always compliant

Note: Any ratings of 1 or 2 should prompt some Action in your Action Plan.

WORKSHOP SESSION

Constitution and 3.2.3 Questions from Trainer

NZ Law 3.2.4 Participant Questions

3.2.3 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

General:

Is there a purpose or objects section in your Constitution?

What does it say in your Constitution about charitable purposes or charitable objectives?

Are there specific objectives or broad charitable purposes?

Governors:

Is there a powers section in your Constitution?

In what ways are your powers limited by your Constitution?

What rules must you follow in order to change your Constitution?

Management / Staff:

How are you affected by the rules in your Constitution?

Have the Board / Trustees delegated authority to you in accordance with the Constitution?

Beneficiaries / Stakeholders:

How are you affected by the rules in your Constitution?

Has the Board / Trustees reported to you in accordance with the Constitution?

3.2.4 Participant Questions

(space for writing your own questions to ask the Trainer)

3.3 ACTION PLAN

Constitution and Top 5 actions to improve compliance and manage risk

NZ Law

Your name: _____

Date: _____

Your organisation: _____

What actions do you need to take to improve your compliance and to manage any risks of:

- operating outside the powers of your Constitution; or
- breaching your legal obligations?

Action to be taken:

Who is responsible: Due Date:

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Section 4

Charitable Purposes

4.1.1 What are charitable purposes and “4 heads of charity”?

4.1.2 Public benefit test

4.1.3 Funds must be applied to advance charitable purposes

4.1.4 Charitable purposes (Marae and Ture Whenua Trusts)

4.2 WORKSHOP SESSION

4.3 ACTION PLAN



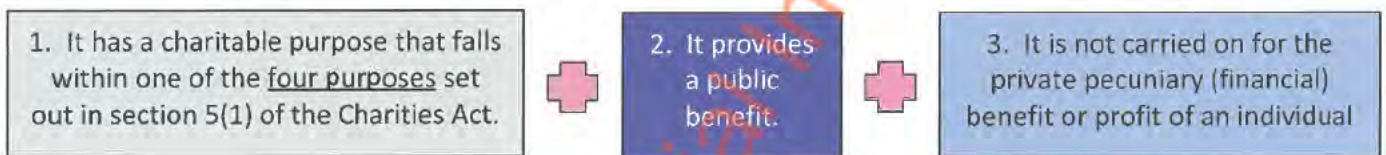
Section 4: Charitable Purposes

4.1 KNOWLEDGE & INFORMATION

Charitable Purposes	<p>4.1.1 What are charitable purposes and the “four heads of charity”?</p> <p>4.1.2 Public benefit test</p> <p>4.1.3 Funds must be applied to advance charitable purposes</p> <p>4.1.4 Charitable purposes (Marae and Trusts under Te Ture Whenua Māori Act)</p>
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4.1.1 What are charitable purposes and the “four heads of charity”?

This is the second element in the FOMANA Charitable Purpose Compliance Model because it is the key ingredient that the Charities Commission will check for in your rules or Constitution¹¹. The Commission must be satisfied that your organisation meets these three tests:



What are the four purposes or “four heads of charity”?

The “four heads of charity” have their origins in common law and a case that considered the meaning of charitable purpose in the context of income tax. In Pemsel’s case¹² the judgment of Lord Macaghten embedded into law the four categories of charitable purposes (or heads) of charity, being:

1. Relief of Poverty;
2. Advancement of Education;
3. Advancement of Religion;
4. Other matters beneficial to the community.

Pemsel's case held that for the purposes of exemption from income tax the definition of "charitable purpose" should be the legal and technical definition deriving from the Charitable Uses Act 1601, generally referred to as the Statute of Elizabeth.

¹¹ Charities Commission Information Sheet “Charitable Purpose” updated February 2008, http://www.charities.govt.nz/guidance/charitable_purpose.html

¹² House of Lords decision in *Commissioners for Special Purposes of the Income Tax v Pemsel*.6 [1891] AC 531.

The Preamble to the Statute of Elizabeth contained the following list of purposes considered charitable at that time:

relief of aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners; schools of learning; free schools and scholars in universities; repair of bridges, ports, havens, causeways, churches, sea banks, and highways; education and preferment of orphans; relief, stock or maintenance of houses of correction; marriage of poor maids; supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed; relief or redemption of prisoners or captives and aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

Current application of “four heads of charity” in New Zealand law

Subsequent cases have refined what comes within each category. In New Zealand the latest case, and incidentally the first appeal under the Charities Act 2005, is *Travis Trust v Charities Commission*¹³ in which Justice Williams considered whether the promotion of a horse race, or horse racing in general, was a charitable purpose (it didn't) and whether the Cambridge Jockey Club met the public benefit test (it didn't.).

In his judgment he said:

A trust to promote racing could only be charitable in nature if its deeper purpose was the pursuit of some other objective, either in principle or, in accordance with charities jurisprudence, a charitable purpose in its own right within the spirit and intendment of the Statute of Elizabeth. Thus, if it could have been established that the true intention of the support for this race was the promotion of health, education or perhaps even animal welfare, it might have satisfied the test. But it is clear that none of these purposes is the deep reason for this Trust, and counsel for the appellant quite rightly did not pitch his case on that basis.

It follows that the decision of the Commission is to be upheld and the appeal is dismissed.

The Charities Commission Information Sheet entitled “Charitable Purpose and community and economic development” published in October 2009 discusses other legal cases and the current legal position in NZ with regard to the charitable status of economic development organisations.¹⁴

¹³ HC WN CIV-2008-485-1689 3 December 2008

¹⁴ http://www.charities.govt.nz/news/fact_sheets/comecdev.htm

Purposes that may not meet “charitable purposes” and public benefit tests

Advocacy¹⁵	YES – charitable	NO – not charitable
<p>(a) <u>Person and representational advocacy</u> – for example, helping people access benefits as part of your charitable work; or</p> <p>(b) <u>political advocacy</u> - for example, advocacy for political change, for a political party or lobbying for a law change or enforcement.</p>	<ul style="list-style-type: none"> • if it is representational advocacy and part of the organisation’s charitable work, <p>or</p> <ul style="list-style-type: none"> • if it is political advocacy which is ancillary to your main charitable purpose. 	<p>if it is political advocacy and it is a main purpose of your organisation.</p>
<p>Sport</p> <p>For further information, see useful Information Sheet produced by the Charities Commission on Charitable Purpose and Sport and Recreation Organisations, updated February 2010¹⁶</p> <p>Generally there must be a link to the “four heads of charity”.</p>	<p>YES – charitable</p> <ul style="list-style-type: none"> • if purposes are to relieve poverty or promote health <u>through</u> sport and recreational activity and participation can be linked with improved health (and reduced adverse health); • to advance physical education for young people, schools or universities <u>through</u> sport; • by providing community or recreational facilities “in the interests of social welfare”¹⁷ or for purposes that “otherwise benefit the community” (public benefit test). 	<p>NO – not charitable</p> <p>gifts for sporting purposes were not charitable if the main purpose was considered to be the promotion of sports for entertainment, or amusement, or competitive reasons (usually for an individual or group) and not to advance some other recognised charitable object.</p>

In *Travis Trust v Charities Commission* Joseph Williams J held:

*In the area of sport and leisure, the general principle appears to be that sport, leisure and entertainment for its own sake is not charitable but that where these purposes are expressed to be and are in fact the means by which other valid charitable purposes will be achieved, they will be held to be charitable.*¹⁸

¹⁵ Charities Commission Information Sheet on “Advocacy” and the Charities Act, updated March 2008,

http://www.charities.govt.nz/news/fact_sheets/advocacy.htm

¹⁶ Charities Commission Information Sheet on “Charitable Purpose and Sport and Recreation Organisations, updated February 2010,

http://www.charities.govt.nz/news/fact_sheets/sportsrec_pos.html

¹⁷ Under section 61A of the *Charitable Trusts Act 1957*

¹⁸ HC WN CIV-2008-485-1689 3 December 2008, para 52

Summary of each of the four heads of charity¹⁹

<p>1st head of Charity</p> <p>Relief of Poverty</p> <p>To be charitable under this category, your organisation's purpose must —</p> <ul style="list-style-type: none"> • be directed at people who are poor, in need, aged, or suffering genuine hardship, and provide relief. 	<p>Courts have found these purposes to "relieve poverty" —</p> <ul style="list-style-type: none"> • caring for the aged, children, or orphans; • caring for the infirm, blind, war veterans, or disabled; • caring for the intellectually disabled, discharged prisoners, or alcoholics; • providing accommodation for elderly people, patients' relatives, staff at hospitals and emergency shelters; • helping other needy persons (for example, refugees) or providing disaster relief.
<p>2nd head of Charity</p> <p>Advancement of education</p> <p>To be charitable under this category, your organisation's purpose must —</p> <ul style="list-style-type: none"> • provide some form of education, and • ensure learning is passed on to others. 	<p>Courts have found these purposes to "advance education" —</p> <ul style="list-style-type: none"> • providing education through early childhood centres, schools and universities; • providing scholarships and prizes for academic achievement • founding and supporting schools, technical colleges, and universities; • providing or improving sporting facilities for schools or universities; providing museums and libraries; • developing the character of young people (for example some youth groups); delivering vocational training; • publishing and selling law reports.
<p>3rd head of Charity</p> <p>Advancement of religion</p> <p>To be charitable under this category, your organisation's purpose must —</p> <ul style="list-style-type: none"> • be for the benefit of a religion and • ensure a religious faith is passed on to others. 	<p>Courts have found these purposes to "advance religion" —</p> <ul style="list-style-type: none"> • celebrating religious services in public; conducting foreign missionary work; • providing and maintaining grounds and buildings to be used by churches or other religious organisations; • maintaining cemeteries or burial grounds for a particular religion; • providing superannuation schemes for the retirement of ministers of religion; supplying religious literature; • providing religious education through Sunday schools, theological colleges, and conducting religious retreats.

¹⁹ Information sourced from Charities Commission Information Sheet on Charitable Purpose, updated February 2008, http://www.charities.govt.nz/guidance/charitable_purpose.html

<p>4th head of Charity</p> <p>Another matter beneficial to the community²⁰</p> <p>To be charitable under this category, the organisation's purpose must be —</p> <ul style="list-style-type: none"> • very similar to the spirit and intent of those purposes listed in the Preamble to the Statute of Elizabeth (see above) or very similar to a charitable purpose as decided by the courts and • beneficial to the community. <p>Ref: Charities Commission Information Sheet "Guidance on the 'public benefit' test"²¹</p>	<p>Courts have found these purposes to be "beneficial to the community":</p> <ul style="list-style-type: none"> • promoting public health (such as providing education, counselling, and rehabilitation services); • providing public works and services (such as building roads, maintaining a water supply, and providing cremation or burial services); • providing <u>public</u> amenities and recreational facilities (such as public halls, libraries, museums, statues, fountains, playing fields, gymnasiums, swimming pools, parks, and botanical gardens); • protecting the environment (such as revegetation, afforestation, and conservation); • protecting human life (providing emergency rescue services) • preventing cruelty to, and protecting the welfare of, animals (eg. animal shelters or sanctuaries); • facilitating social rehabilitation (such as integrating people back into the community who have a disability or some form of deprivation); • promoting the efficiency of the armed forces.
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Development of law relating to charitable purposes and settlement of Treaty claims

In *Latimer v CIR* [2002] 3 NZLR 195, the High Court developed a new category of charitable purpose, recognising that CFRT assistance to Māori claimants was of a charitable nature.

The assistance purpose of providing the Waitangi Tribunal with additional material which will help it to produce more informed recommendations, leading in turn to the settlement of longstanding disputes between Māori and the Crown, is of that character. It is directed towards racial harmony in New Zealand for the general benefit of the community.

Citing this case, Justice Williams in *Travis Trust v Charities Commission*²² said:

The Court noted in addition that there were educational and relief of poverty effects of settling Treaty claims but there is no doubting that the Court established the pursuit of racial harmony and social cohesion as a new charitable category in New Zealand. Thus there is room for growth and development in appropriate cases.

²⁰ Information sourced from Charities Commission Information Sheet on Charitable Purpose, updated February 2008

²¹ http://www.charities.govt.nz/news/fact_sheets/benefitTest.htm

²² HC WN CIV-2008-485-1689 3 December 2008

4.1.2 Public benefit test²³

To provide a public benefit, there is a two-part test:

1. there must be an identifiable benefit



2. the benefit must be available to the general public, or to a wide section of the public

Benefit

Your organisation should be able to clearly identify its public benefit. Indirect benefits (where the benefit extends beyond the immediate beneficiaries) as well as direct benefits, may be taken into account in assessing whether you provide sufficient benefit to the public.

Test is not met if:

- your purpose is illegal or, if taking into account all the relevant facts and circumstances, there is a benefit outweighed by a greater harm to the community;
- your primary purpose is political.

Public

Your benefit must be to the general public, or to an appreciable section of the public. Beneficiaries may be defined by charitable needs, a particular geographical area, or other criteria provided the resulting number of beneficiaries is sufficiently open in nature. If it is difficult to describe your beneficiaries using objective and impersonal terms, this may indicate that your organisation is established for private rather than public benefit.

Blood relationship²⁴

Section 5(2)(a) of the Charities Act says that if beneficiaries of a trust or members of a society or institution are related by blood, this will not, of itself, prevent you from satisfying the public benefit requirement. This applies to all trusts, societies, and institutions.

Members as beneficiaries

Where your members are also the beneficiaries, any restrictions placed on who may become a member must be reasonable and justifiable in the circumstances. Benefits must still be provided to a wide section of the public, whether they are members or non-members. Courts have found that providing amusement, entertainment, or social activities for members of an organisation are private rather than public benefits.

²³ Charities Commission Information Sheet "Guidance on the 'public benefit' Test", October 2009, http://www.charities.govt.nz/news/fact_sheets/benefitTest.htm

²⁴ Charities Commission Information Sheet "Iwi / Maori organisations and the Charities Act", updated August 2009, http://www.charities.govt.nz/news/fact_sheets/iwi_maori_charities_act.html

4.1.3 Funds must be applied to advance charitable purposes²⁵

The Commission must be satisfied that all money and benefits flowing from your organisation are directed towards advancing your charitable purposes.

Ways to satisfy this requirement:

- clauses in your rules that ensure that the payment of money, advantage, or benefit (including salaries and wages) is directed at achieving your charitable purposes;
- If you are a trust wishing to make a payment or benefit to a trustee, your rules (trust deed) must clearly allow this payment;
- Winding-up clause in your rules must state that any remaining assets, after debts and liabilities have been settled, must be directed to a charitable purpose (or to another organisation with charitable purposes);
- Usual good governance rules apply. This includes the requirement for people not to be involved in decisions where they have a personal interest, financial or otherwise.

4.1.4 Charitable purposes (Marae & Trusts under Te Ture Whenua Māori Act)²⁶

Section 5 (2)(b) of the Charities Act says that a marae has a charitable purpose if the marae is on land that is a Māori reservation and the funds of the marae are used only for:

- (1) administration and maintenance of the land and the structure of the marae or
- (2) a charitable purpose or
- (3) a combination of points (1) and (2).

When applying for registration with the Commission, provide:

- a copy of the *Gazette* notice relating to the reservation of the land; or
- the legal description of the land.

Trusts under Te Ture Whenua Māori Act 1993²⁷

The Commission may be able to register trusts established under *Te Ture Whenua Māori Act 1993* if they can clearly show they have a charitable purpose. An order of the Māori Land Court under *Te Ture Whenua Māori Act* 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.

²⁵ http://www.charities.govt.nz/guidance/charitable_purpose.html

²⁶ For more information see article by MLC Judge Fox *Marae and Taxation Exemptions*, Pouwhenua, January 2008, <http://www2.justice.govt.nz/maorilandcourt/pdf/TePouwhenua43.pdf>

²⁷ http://www.charities.govt.nz/news/fact_sheets/iwi_maori_charities_act.html

4.2 WORKSHOP SESSION

Charitable	4.2.1 Mini Quiz
Purposes	4.2.2 Whiteboard Exercise 4.2.3 Questions from Trainer

4.2.1. Mini Quiz

Name the four heads of Charity and 2 parts of public benefit test.

4.2.2. Whiteboard Exercise

Use your Constitution to create two lists (a) activities that comply and (b) non-compliant activities.

4.2.3 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

General

What is meant by “No private pecuniary profit”?

What does it say in your Constitution about no private pecuniary profit?

Governors:

How can you be sure that all money and benefits flowing from your organisation are directed towards advancing your charitable purposes?

Management / Staff:

What policies would be required to make sure funding applications advance charitable purposes?




Beneficiaries / Stakeholders

What are the criteria for marae to become registered with Commission?

WORKSHOP SESSION

Charitable Purposes	4.2.4 Self-Assessment by Participants 4.2.5 Participant Questions
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4.2.4 Self-Assessment by Participants

(a) How confident are you that all money and benefits flowing from your organisation is being directed towards advancing your charitable purposes?	Not confident  High Risk	Quite confident  Med Risk	Extremely confident  Low Risk
(b) What are your reasons for that assessment?			
(c) What would increase your confidence and lower the risk?			

Note: High or Medium Risk ratings should prompt some Action in your Action Plan.

4.2.5 Participant Questions

(space for writing your own questions to ask the Trainer)

4.3 ACTION PLAN

Charitable Purposes	Top 5 actions to improve compliance and manage risk
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Your name: _____ Date: _____

Your organisation: _____

What actions do you need to take to improve your compliance and to manage any risks of:

- operating outside of your charitable purposes as set out in your Constitution; or
- breaching your legal obligations?

Action to be taken: _____ **Who is responsible:** _____ **Due Date:** _____

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Released under the Official Information Act 1982

Section 5

Stakeholders

- 5.1.1 Who are your stakeholders?
- 5.1.2 Accountability to stakeholders
- 5.2 WORKSHOP SESSION
- 5.3 ACTION PLAN



Section 5: Stakeholders

5.1 KNOWLEDGE & INFORMATION

Stakeholders	5.1.1 Who are your stakeholders? 5.1.2 Accountability to stakeholders
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5.1.1 Who are your stakeholders?

The next element in the compliance model is stakeholders²⁸, that is, those people or groups who have a stake (or interest) in how your organisation operates. Good communication by the governance group of your organisation with its stakeholders is likely to build trust, confidence, and public support for your charity. It is essential to risk management and compliance.

Identifying your stakeholders using the Constitution

Applying the Model, the first step in identifying stakeholders is to check your Constitution. Here are ten basic questions that might assist you to identify your stakeholders:

1. Which people or groups are specifically named in the Constitution?
2. Who do you have to account to in terms of annual or regular reporting obligations?
3. Who are the subsidiary or affiliated groups associated with your organisation?
4. Who provides funds or income to your organisation?
5. Which people or groups may receive benefits or services from your organisation?
6. Who is entitled to attend your meetings and what are their rights and responsibilities?
7. Who is entitled to vote or appoint governors of your organisation?
8. Who is eligible to be a governor or to hold office in your organisation?
9. Who prepares finance reports, audited accounts and other accountability documents?
10. Who do you employ or contract services from?

Stakeholders might be grouped as internal or external, for example (not inclusive):

Internal Stakeholders	External Stakeholders
Individual Members / Beneficiaries / Clients	Funders or donees
Wholly-owned subsidiary companies	Third party business partners
Affiliated Marae or Hapu organisations	Charities Commission, IRD and other Govt agencies
Kaumtua-Kuia or Internal Advisory committees	Professional Advisors (Legal, Financial etc)
Governors	Service contractors or suppliers of goods
CEO / Managers / Employees	Other iwi/ Māori organisations
Shareholder(s) / Parent organisation	Local government
	Media

²⁸ See Section 2 for definition of stakeholders for risk management purposes.

5.1.2 Accountability to stakeholders

Once stakeholders have been identified it is good practice to develop an annual Stakeholder Management plan setting out the communication needs for each stakeholder group, how these communications will be managed, and by whom. Some of the needs will be dictated by the terms of the Constitution, for example the annual reporting cycle. Others will be in response to an unforeseen event or crisis. The Te Puni Kōkiri booklet *Communicating with Stakeholders*.²⁹

Stakeholder Communications Management Plan

This need not be complicated and may take the form of a Schedule or table as follows:

Stakeholder:	Communication needs:	Communication process:	Person responsible:
Who will receive communication?	What do they want to know? What do we want to communicate? Formal reporting required? Informal communication needed?	How will we communicate – by hui/mailout/report/newsletter? How often will we communicate?	Who will prepare? Who will deliver?

Constitutional compliance example:

<i>Members of iwi</i>	<i>Formal requirement of Trust Deed to report on performance of Trust and on performance of Asset Holding Company.</i>	<i>Must present at Annual Meeting: a) Annual Report inc audited financial report; b) Annual Plan for next year; c) Asset Holding Company Annual Report.</i>	<i>Management; Auditor; Chairperson to preside at AGM</i>
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Reporting under the Charities Act 2005 and transparency on public register³⁰

The Charities Act 2005 requires all charities registered with the Charities Commission to file an Annual Return. The Annual Return asks for a copy of the charity's financial accounts and includes a statement of the financial performance of the charity. The information you provide in your Annual Return, including your financial accounts, will be publicly available on the Charities Register at www.charities.govt.nz. See the back page of each Case Study in the Reference section of this toolkit for an example of the information on the Charities Register as at 30 June 2009.

²⁹ <http://www.governance.tpk.govt.nz/docs/tpk-commicategwithstakeholders-2007.pdf>

³⁰ Charities Commission Information Sheet, Annual Returns under the Charities Act, updated October 2008, http://www.charities.govt.nz/guidance/annual_returns.html

5.2 WORKSHOP SESSION

Stakeholders	5.2.1 Whiteboard Exercise
	5.2.2 Benchmark Exercise

5.2.1. Whiteboard Exercise

Identify three stakeholders from your Constitution and create a Stakeholder Communications Management Plan.

5.2.2 Benchmarking Exercise

Rate your organisation's performance or compliance against the benchmarks in Hallmark 6: Accountable and Transparent³¹

Hallmark 6: Accountable and transparent

An effective charity is accountable to the public and others with an interest in the charity (stakeholders) in a way that is transparent and understandable.

In order to demonstrate this, the charity:

RATING FOR YOUR CHARITY

a) complies with its legal obligations (and best practice), to produce annual accounts and a report which includes an explanation of what the charity has done for the public benefit during the year;	<ol style="list-style-type: none"> 1. Not compliant 2. Sometimes compliant 3. Always compliant
b) explains in its Annual Report the extent to which it has achieved its charitable purposes in a way that people with an interest in the charity can understand;	<ol style="list-style-type: none"> 1. Not compliant 2. Sometimes compliant 3. Always compliant
c) has well-publicised, effective and timely procedures for dealing with complaints about the charity and its activities. These should explain how complaints and appeals can be made, and give details of the process and likely timescales;	<ol style="list-style-type: none"> 1. Not achieved 2. Sometimes achieved 3. Always achieved
d) can show how it involves beneficiaries and service users in the development and improvement of its services; the contribution may have been by way of the appointment of beneficiaries as trustees or their involvement through discussion, consultation or user group input;	<ol style="list-style-type: none"> 1. Not achieved 2. Sometimes achieved 3. Always achieved
e) has a communications plan which ensures that accurate and timely information is given to everyone with an interest in the work of the charity, including the media, donors and beneficiaries.	<ol style="list-style-type: none"> 1. Not achieved 2. Sometimes achieved 3. Always achieved

Note: Any ratings of 1 or 2 should prompt some Action in your Action Plan.

³¹ Benchmark Exercise has been developed using Hallmarks of an Effective Charity. Acknowledgement of source material to UK Charities Commission, <http://www.charity-commission.gov.uk/publications/cc10.asp>

WORKSHOP SESSION

Stakeholders	5.2.3 Questions from Trainer 5.2.4 Participant Questions
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5.2.3 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

General

Do you know the potential and actual size of your client base or membership numbers?

If not, who could obtain that information for you?

Who is responsible for maintaining your client or membership/ client / beneficiary database?

Governors:

Does your organisation have a communications policy that covers all of its stakeholders?

Do you have a media spokesperson?

Management / Staff:

How do you communicate with your stakeholders, and how often?

Beneficiaries / Stakeholders

What is your preferred method of communication?

How often do you receive communications from the Board / Governors? Is it easy to understand?

5.2.4 Participant Questions

(space for writing your own questions to ask the Trainer)

5.3 ACTION PLAN

Stakeholders | Top 5 actions to improve accountability and manage risk

Your name: _____ Date: _____

Your organisation: _____

What do you (your organisation) need to work on to improve your accountability to stakeholders and to manage any risks to reputation, trust or public confidence in your charity?

Action to be taken:

Who is responsible: Due Date:

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Section 6

Charities Commission and Registration

6.1.1 Charities Act & functions of the Charities Commission

6.1.2 Registration as a charity and certification of Officers

6.1.3 Compliance after registration

6.1.4 Deregistration and loss of tax-exemption

6.2 WORKSHOP SESSION

6.3 ACTION PLAN



Section 6: Charities Commission and Registration

6.1 KNOWLEDGE & INFORMATION

Charities Commission and Registration	6.1.1 Charities Act and functions of the Charities Commission
	6.1.2 Registration as a charity and certification of Officers
	6.1.3 Compliance after registration
	6.1.4 Deregistration and loss of tax-exemption

6.1.1 Charities Act and the functions of the Charities Commission

The Charities Act 2005 was passed in April 2005. The Act established the Charities Commission which came into being on 1 July 2005. The Commission's main functions are:

1. to establish and maintain a registration and monitoring system for charitable organisations; and
2. to provide support and education to the charitable sector on good governance and management.

Enforcement powers of the Commission³²

If a registered charity does not comply with the Act, the Commission has the authority to:

- impose administrative penalties
- issue warning notices
- publicise any non-compliance
- undertake further investigations
- deregister charities that have seriously or repeatedly failed to comply with the Act
- check that registered charities are complying with their described purposes.

³² Charities Commission Info Sheet A Guide to the Charities Act <http://www.charities.govt.nz/guidance/electronic-guide.htm>

6.1.2 Registration as a charity and certification of Officers

An organisation can register if:

- it is established and maintained for charitable purposes (A trust does not need to have exclusively charitable objectives. It must have at least one charitable objective, but it may have other objectives as well)
- 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.

Certification of Officers³³

To be registered, organisations must certify that each of their officers is qualified as an officer under the Charities Act 2005. Officers are all your Governors or current trustees (if Trust entity) or all your members of your highest governing body (if not a Trust).

To qualify, an officer **must not be:**

- (a) an undischarged bankrupt
- (b) younger than 16
- (c) convicted of a crime of dishonesty and sentenced within the last 7 years
- (d) disqualified from being an officer under the rules of their organisation
- (e) disqualified by the Commission under section 31(4) of the Charities Act
- (f) subject to a property order under the Protection of Personal and Property Rights Act 1988, or have their property managed by a trustee corporation under section 32 of that Act (this relates to people who are not fully able to manage their affairs)
- (g) prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993
- (h) a body corporate that is being wound up, in liquidation or receivership or subject to statutory management under the Corporations (Investigation and Management) Act 1989.

Note: Any officers appointed under an Act or by the Governor-General, Governor-General in Council or a Minister automatically qualifies and these criteria do not apply.

³³ Charities Commission Information Sheet, Officer Certification, updated March 2008 and Officer Certification Form (Form 2), <http://www.charities.govt.nz/guidance/officers.html>

6.1.3 Compliance after registration

Annual Returns³⁴

Once registered, it is compulsory to file an Annual Return on the specified due date (no later than six months after the end of your financial year). Filing fee is \$50 online or \$75 for paper form.

The Annual Return consists of:

- a completed *Annual Return Form (Form 4)*;
- a copy of your accounts³⁵ (audited or un-audited);
- notification of changes to any of your organisation's details including officer changes.

Notice of changes and of date change came into effect³⁶

You have a duty to inform the Commission about changes in these six key areas using Form 3:

<ul style="list-style-type: none">• the name of your charity• the address for service• the balance date	<ul style="list-style-type: none">• the rules• the purposes of your charity• a change in the officers (including new appointments).
---	---

6.1.4 Deregistration and loss of tax exemption

Some of the changes notified may affect your organisation's entitlement to be registered and could lead to a decision by the Commission to de-register your charity. In that situation, the Commission will send you a formal notice to your address for service and give you the opportunity to have your say on the matter. If the Commission is still unable to accept your change, it will send a formal notice setting out the decision and the reasons for it.³⁷

The Charities Commission can also remove an organisation if:

- an organisation asks to be removed from the Charities Register;
- it no longer qualifies
- there is a significant or persistent failure by the organisation or one of its officers (or collectors) to meet its obligations under the Act, or
- the organisation engages in serious wrongdoing, or any person engages in serious wrongdoing in connection with the organisation.

³⁴ Charities Commission Information Sheet, "Annual Returns under the Charities Act" updated October 2008, http://www.charities.govt.nz/guidance/annual_returns.html

³⁵ http://www.charities.govt.nz/news/fact_sheets/new%20info%20sheets/HOW-ARHELP.pdf

³⁶ http://www.charities.govt.nz/news/fact_sheets/changes.htm

³⁷ Charities Commission Information Sheet, "Deregistration – removing charities from the Charities Register", September 2009 http://www.charities.govt.nz/news/fact_sheets/deregistration.htm

The Commission must not deregister it unless it is satisfied that:

- it is in the public interest to do so, and
- there are grounds to deregister the charity, or that the facts of the objection are not correct, or that the objection has been withdrawn or is trivial in nature.

Helpful tip– if your charity receives a notice saying that the Commission intends to remove it from the Register you have the right to object – but it is important that you do so within the timeframe stated in the notice. If the Commission doesn't hear from you it will begin steps to formally deregister the charity. Contact the Commission as soon as you can even if it is to confirm that you have received the notice and will be making an objection.³⁸

Consequences of Deregistration

The obvious and most dire consequence is loss of tax exemption and the severe financial implications that will have on your organisation. IRD Tax rates for non-exempt charities are:³⁹

If a charitable organisation ...	and ...	then ...
is incorporated under the Incorporated Societies Act 1908 or Companies Act 1993	does not qualify for a tax exemption	its income is taxed at the company rate - currently 30 cents in the dollar. (30% tax rate)
operates as a trust including trusts incorporated under the Charitable Trust Act 1957	is not tax-exempt	they are liable for tax at 33 cents in the dollar on trustees' income – IR288. (33% tax rate)
is not incorporated under a specific Act, and so is an unincorporated charitable organisations	it is not entitled to a tax exemption	it will be liable for income tax at the same rate as an individual taxpayer. However, it will not qualify for any of the tax credits (formerly rebates) that individual taxpayers can claim.

IMPORTANT NOTE ON INVESTIGATIONS BY CHARITIES COMMISSION

Charitable organisations will be required to assist the Commission with any investigations that it undertakes in performance of its statutory monitoring obligations. It will be an offence for any charitable organisation to fail, without reasonable excuse, to supply the Commission with information and documents that have been requested during an investigation.⁴⁰

³⁸ http://www.charities.govt.nz/news/fact_sheets/deregistration.htm

³⁹ <http://www.ird.govt.nz/charitable-organisations/chart-orgs-intro/>

⁴⁰ See Charities Commission Hot Topic – The Charities Act, fundraising costs and charitable purposes, August 2009

Deregistration and Loss of Tax Exemption – potential impact and risk mitigations

The following table was contained in the FOMANA Risk and Audit Report⁴¹ and is reproduced here, slightly modified, to illustrate and reinforce the necessity to have robust compliance systems.

Deregistration & Loss of Tax Exemption Potential Adverse Impact	Steps to minimise and manage Risk
<p>Financial costs</p> <ul style="list-style-type: none"> Financial challenge (loss of cashflow) Cost of paying back taxes (potentially back to the date of non-compliance or at least back to the date of deregistration) <p>Legal costs</p> <ul style="list-style-type: none"> Legal action against governance entity <p>Reputational costs</p> <ul style="list-style-type: none"> Loss of mana for organisation and individuals Long-term stigma of de-registration and harm to likelihood of future registration Loss of organisational reputation in eyes of stakeholders Loss of public confidence in organisation Loss of funding income from cautious funders 	<ul style="list-style-type: none"> Annual external audit Board of Governors / Officers appointed or elected with high levels of business acumen Compliance monitoring and reporting Educate all Trustees, beneficiaries and staff of charities requirements Ensuring an annual return is submitted to the Commission within the appropriate timeframe; and Ensuring officers remain qualified (as per the Act and the entity's Constitution) throughout their period of service to the entity; Ensuring robust processes and policies are implemented, kept up to date and followed Ensuring the Commission are notified of any changes to the Constitution; Financial reporting and monitoring; Good Internal and external controls; Mechanism for reviewing all new activities against Constitution, and contractual obligations; Operating within core activities as identified in the Constitution; Proactive communication and relationship management strategies with relevant groups; Staff responsibility for compliance clearly identified with appropriate resources allocated; Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request.

⁴¹ FOMANA Risk & Audit Report, 31 March 2009

6.2 WORKSHOP SESSION

Charities	6.2.1 Workshop Exercise
Commission and Registration	6.2.2 Annual Return Form Exercise

6.2.1 Workshop Exercise

Identify 3 steps your organisation could take to comply with the following four obligations under the Charities Act 2005 and assign responsibility for the actions.

Charities Act obligations	Steps to ensure compliance (whose role?)
1. Governors / Officers remain qualified (as per the Act and the entity's Constitution) throughout their period of service to the entity.	1. 2. 3.
2. The Commission are notified of any changes to the rules, deed or constitution or officers. <i>(section 40 of the Act);</i>	1. 2. 3.
3. An annual return is submitted to the Commission within the appropriate timeframe. <i>(sections 41 & 42 of the Act);</i>	1. 2. 3.
4. Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request. <i>(section 39 of the Act).</i>	1. 2. 3.

6.2.2 Annual Return Form Exercise

Complete the Charities Commission Annual Return (Form 4)⁴² form for your organisation.

See Checklist on following page for information that you will require to complete this exercise.

⁴² Download Form 4 Annual Return for a charitable entity at http://www.charities.govt.nz/news/forms/form_4.pdf

Annual Return Checklist

Information needed to complete Form 4 includes:

- Your organisation's legal or most formal name.
- Other names (if any) that it is known by.
- Phone, fax, email and website details (these contact details are optional)
- Identifying number
- Your Charities Commission registration number.

Financial information

- End of financial year/balance date.
- A reasonable estimate of the percentage of funds sourced in New Zealand but spent overseas in your last financial year.
- A copy of your financial accounts for your last financial year (these do not have to be audited).
- The type of accounting method you use, cash or accrual.
- A statement of your financial performance and position set out in the template in Form 4. [See question 25.](#)
- See Charities Commission Info Sheet "Help Notes for completing Financial Information in your Annual Returns, http://www.charities.govt.nz/news/fact_sheets/new%20info%20sheets/HOW-ARHELP.pdf

Your Rules

- If your rules have changed you need to send us:
- a copy of the amendment and
- a copy of the record of the change. For example – minutes of the meeting showing the decision and the effective date of the change to the rules.

Your People

- The approximate number of paid full time and paid part time employees that work for you in an average week, and the approximate number of hours they work.
- The approximate number of volunteers that work for you in an average week, and the approximate number of hours they work.

Charitable Purpose

You will need to specify:

- the sectors your organisation operates in, for example – "health". Choose from the list on the form.
- your activities. For example – "makes grants". Choose from the list on the form.
- who benefits from your organisation? Choose from the list on the form.
- the geographical area your organisation operates in. Choose from the list on the form.

Officer details

- The names of any new officers.
- Reminder: an Officer Certification Form – Form 2 must be completed for each officer in your organisation and be signed by that officer or someone on their behalf.
- The name of any officer who is no longer an officer and their last date as an officer.

Information that may accompany your Annual Return (but is not essential):

- The name, phone and email details of the person you would like us to contact regarding any administrative matters. For example – if we find a question has been overlooked.
- A letter asking us to restrict public access to your information on the Register. See our information sheet [Restricting public access to your information on the Charities Register.](#)

WORKSHOP SESSION

Charities	6.2.3 Questions from Trainer
Commission and Registration	6.2.4 Participant Questions

6.2.3 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

Governors:

What would happen to your organisation if it lost its tax exemption?

What would be the financial implications if your organisation was deregistered?

What would be the reputational implications (for you and the organisation)?

How do you make sure that any appointed / elected Officers are eligible under the Charities Act?

Management / Staff:

Who has primary responsibility for filing the Annual Return?

What organisation / personnel changes must be notified to the Charities Commission?

Beneficiaries / Stakeholders

Have you checked your organisation's entry on the Commission's online Public Register (www.charities.govt.nz)?

Is the entry up-to-date and accurate?

Are the latest financial reporting documents available?

6.2.4 Participant Questions

(space for writing your own questions to ask the Trainer)

6.3 ACTION PLAN

Charities
Commission and
Registration

Top 5 actions to improve compliance and manage risk

Your name: _____

Date: _____

Your organisation: _____

What actions do you need to take to improve your compliance and to manage any risks of:

- (a) Deregistration by the Charities Commission; or
- (b) Loss of tax exemption?

Action to be taken:

Who is responsible: Due Date:

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Section 7

IRD and Tax Exemption

- 7.1.1 Role of IRD and registered charities
- 7.1.2 Tax related obligations for registered charities
- 7.1.3 Tax exemptions and benefits for registered charities
- 7.1.4 Tax liabilities
- 7.2 WORKSHOP SESSION
- 7.3 ACTION PLAN



Section 7: Inland Revenue Department (IRD) & Tax Exemption

7.1 KNOWLEDGE & INFORMATION

IRD	7.1.1 Role of IRD and registered charities
and	7.1.2 Tax related obligations for registered charities
Tax Exemption	7.1.3 Tax exemptions and benefits for registered charities
	7.1.4 Tax liabilities

7.1.1 Role of IRD and registered charities

While the Charities Commission decides if an organisation qualifies for registration as a charity, Inland Revenue continues to administer **charitable tax exemptions**. Generally, Inland Revenue accepts the Commission's decision so that registration will, in most cases lead to tax exemption.

Many charities previously had letters from Inland Revenue confirming that they were tax exempt on charitable grounds. Because those letters pre-date the change to the tax law, those letters are no longer relevant.

Charities registered under the Charities Act are generally eligible for exemptions from income tax on some, or all, of their income. They do not need to apply to Inland Revenue for those exemptions. Once registered, they receive information from Inland Revenue outlining the exemptions they are entitled to and what they have to do to comply with the requirements for the exemptions. Inland Revenue has published [*Operational Statement OS 06/02 Interaction of tax and charities rules*](#)⁴³, covering tax exemption and donee status, which provides more information about the requirements for income tax exemption and donee status.

IMPORTANT NOTE ON INVESTIGATIONS BY IRD

Inland Revenue remains responsible for administering the Revenue Acts and retains the right to audit charities to ensure they continue to be eligible for tax exemptions.

- You must be able to show that you've complied with the relevant tax requirements.
- You must keep certain business records including financial records for seven years, a record of the sources of any donations, a record of how funds have been used in NZ or overseas.

⁴³ <http://www.ird.govt.nz/technical-tax/op-statements/os-interaction-tax-charities-rules.html>

7.1.2 Tax related obligations for registered charities

Your charity may still be liable for other taxes, such as GST, PAYE and FBT. Furthermore, you may have other tax-related obligations which could include:

- If your charity employs staff, it must register as an employer, deduct and pay PAYE.
- Registering for GST if carrying out taxable activity with \$60,000 plus annual turnover.
- Filing various return forms each year.
- Calculating the profit from any business to work out how much tax is due.
- Providing, when requested, a tax return showing all funds earned in any year with sufficient details of the source and application of those funds.

7.1.3 Tax exemptions and benefits for registered charities⁴⁴

The information in this section is sourced from the IRD Guide *IR 255 Tax Information for charities registered under the Charities Act 2005*. If your organisation is unsure about its tax obligations or has a technical question on a specific issue, you should contact IRD directly and promptly. There are Kaitakawaenga Māori at most IRD regional offices based regionally who may be able to assist.⁴⁵

Non-business (investment income) tax exemption

Charities are exempt from income tax on non-business income such as interest and dividends and rents. They may use this income for charitable purposes in and outside NZ. (*IR 255, page 26*)

Business income tax exemption

The portion of a charity's business income which is used for charitable purposes in NZ is exempt from income tax. If an organisation uses its business income for charitable purposes outside NZ as well, only the NZ part is exempt. (*IR 255, page 26*)

Charitable estates

The executor or administrator of a deceased person's estate may derive income from any money or assets left to charitable organisations while the will is being finalised. If the organisation benefiting from the will is entitled to an income tax exemption, the income derived while the funds are held is also exempt. (*IR 255, page 26*).

⁴⁴ IR 255 Tax Information for charities registered under the Charities Act 2005, May 2009, see also IR 256 Charitable Organisations – A tax guide for charities, donee organisations and other groups

⁴⁵ Call IRD 0800-377-774 if you have a query or want to arrange a visit by a Kaitakawaenga Maori (Maori Community Officer service) <http://www.ird.govt.nz/resources/2/3/23c0f3004bbe5875bae8fab87554a30/ir286.pdf>

Gift duty exemption

Any gift that is used to create a charitable trust, to establish an organisation exclusively for charitable purposes, or made to aid charitable organisations, is exempt from gift duty. (IR255 p27)

Donee Status and IRD approved Donee organisation

Inland Revenue must approve an organisation's donee status. Donee status means that individuals who make a cash donation to your charity can claim a tax credit (formerly rebate), and certain companies and Māori authorities can claim a deduction (limited to 5% of the company's or Māori authority's net income). (IR255, pages 28-30)

Resident withholding tax (RWT) – certificate of exemption

Banks and other financial institutions that pay interest are required to deduct RWT from the interest. Charities are eligible for an exemption from RWT but must apply to IRD for a certificate of exemption from RWT which can be shown to the interest payer. (IR255, page 20)

Fringe benefit tax (FBT) exemption

Charitable organisations are generally exempt from paying FBT on any benefits provided to employees while they are carrying out the organisation's charitable activities. (IR255, page 18)

7.4 Tax liabilities

It is important to note that charitable organisations are liable for income tax if:

- at 1 July 2008 they had not started registration process with the Charities Commission;
- they operate with no written rules, constitution or trust deed (may affect some Marae);
- they operate under a set of rules that doesn't meet requirements for tax exemption;
- they use business income for charitable purposes outside New Zealand.

Business income will be subject to income tax if anyone connected with the charity:

- receives or is able to receive any benefit or income from the organisation (this doesn't include reimbursement of expenses, or payment for services provided, as long as the payments are reasonable and at market rates)
- can influence any benefit or advantage they might receive from the business (for example, a trustee cannot be involved in setting the amount of their remuneration).
- is involved in a commercial transaction that is not conducted at commercial rates (for example, a trustee loans money to the trust with interest set at greater than market rates).

7.2 WORKSHOP SESSION

IRD and Tax Exemption	7.2.1 Benchmark Exercise - Rate your organisation's performance or compliance against the benchmarks in Hallmark 5: Financially sound and prudent
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Hallmark 5: Financially sound and prudent⁴⁶

An effective charity has the financial and other resources needed to deliver its purposes and mission, and controls and uses them to achieve its full potential.

In order to demonstrate this, the charity:

RATING FOR YOUR CHARITY

(a) has policies to control and manage its reserves, investments and borrowing, taking professional advice where needed;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(b) integrates financial planning with wider organisational planning and management, ensuring that funds are available when the charity needs them and are used in the most effective way to the benefit of the charity;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(c) ensures financial sustainability by managing cash flow and monitoring and reviewing financial performance during the year, taking timely corrective action where needed;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(d) considers the sources of its income and has a strategy in place to raise the funds it needs - diversifying its sources of income as far as possible;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(e) reviews its fundraising strategies and activities to ensure that they comply with good-practice standards, taking account of any relevant ethical issues;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(f) is aware of the financial risks involved with existing and new ventures and manages the risk of loss, waste and fraud by having robust financial controls and procedures in place;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(g) structures the charity's activities in a tax efficient way and minimises the operational risk to the charity from trading activities;	1. Not achieved 2. Sometimes achieved 3. Always achieved
(h) prepares its Annual Report and accounts in accordance with good practice requirements, and fulfils the legal requirements for filing in a timely fashion.	1. Not achieved 2. Sometimes achieved 3. Always achieved

Note: Any ratings of 1 or 2 should prompt some Action in your Action Plan.

⁴⁶ Benchmark Exercise has been developed using Hallmarks of an Effective Charity. Acknowledgement of source material to UK Charities Commission, <http://www.charity-commission.gov.uk/publications/cc10.asp>

WORKSHOP SESSION

IRD	7.2.2 Questions from Trainer
and	7.2.3 Participant Questions
Tax Exemption	

7.2.2 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

Governors:

If IRD selected your charity for an audit, how would you demonstrate compliance with the relevant tax requirements?

Management / Staff:

Does your charity keep its financial records for seven years? Who has responsibility?

Does your charity have approved Donee status? If so, do you have a record of the donees?

If requested, could your charity produce a tax return showing all funds earned in any year with sufficient details of the source and application of those funds?

Beneficiaries / Stakeholders

How would you be affected if the organisation lost its tax exemption?

7.2.3 Participant Questions

(space for writing your own questions to ask the Trainer)

7.3 ACTION PLAN

IRD and Tax Exemption	Top 5 actions to improve financial management systems and manage risk of loss of tax exemption
-----------------------------	--

Your name: _____

Date: _____

Your organisation: _____

What actions do you need to take to improve financial management systems and to manage any risk of loss of tax exemption?

Action to be taken:

Who is responsible: Due Date:

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Released under the Official Information Act 1982

Section 8

Policies – Processes - People

8.1.1 FOMANA 3Peez Method©

8.1.2 Policy Framework

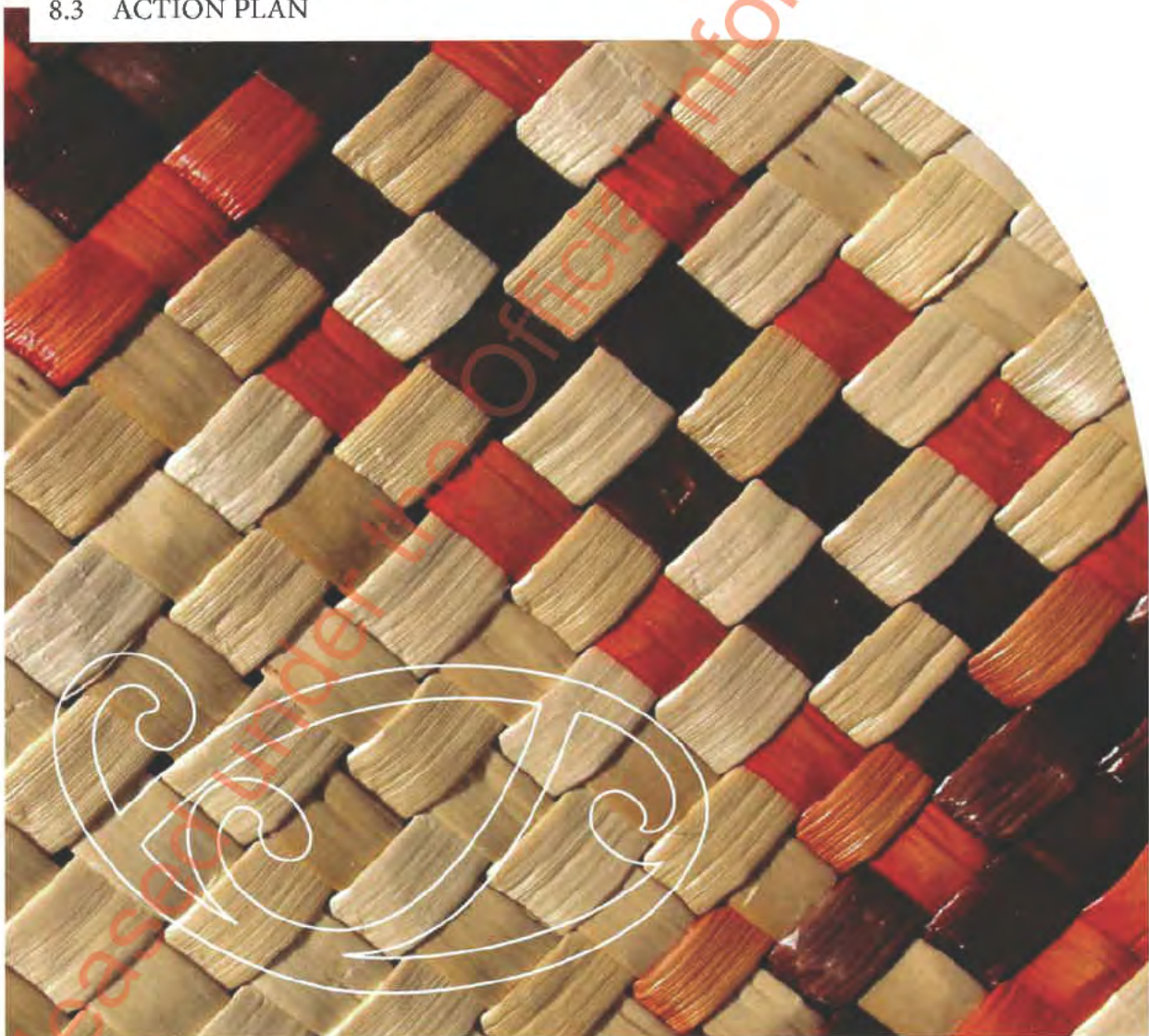
8.1.3 Policy Checklist

8.1.4 Processes

8.1.5 People with purpose

8.2 WORKSHOP SESSION

8.3 ACTION PLAN



Section 8: Policies – Processes - People

8.1 KNOWLEDGE & INFORMATION

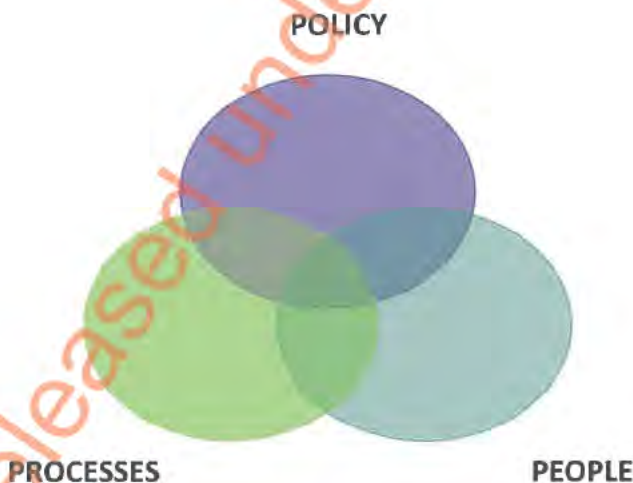
Policies	8.1.1 FOMANA 3Peez Method©
Processes	8.1.2 Policy Framework
People	8.1.3 Policy Checklist
	8.1.4 Processes
	8.1.5 People with purpose

8.1.1 FOMANA 3Peez Method©

This element in the Model is aimed at putting into place practical applications to support and secure charitable purpose compliance within your organisation. Having reviewed your Constitutional, legal, charitable purpose, stakeholder, Charities Act and IRD obligations, it is now critical to apply that acquired knowledge and heightened understanding into a risk-proof system of checks and balances that can be easily carried out by the people in your charity.

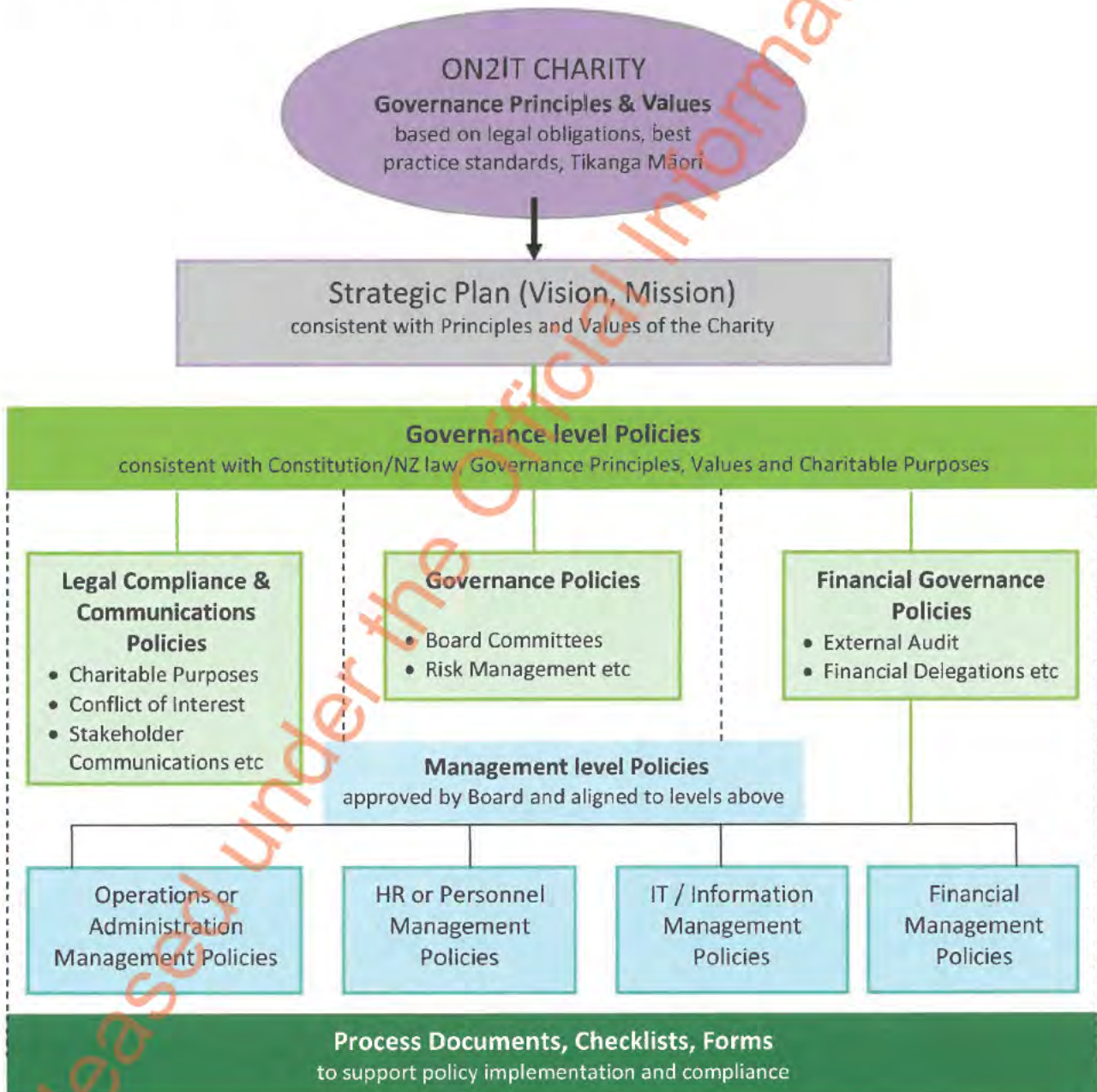
The FOMANA 3Peez Method©

- 3 because there are three components to the method
- First P stands for Policy (guidelines for decision-making to achieve set outcome)
- Second P stands for Processes (includes step by step procedures and paperwork)
- Third P stands for People with purpose (the magic ingredient to successful compliance)
- Eez for eezy to remember and easy to apply.



8.1.2 Policy Framework

Policies do not exist in isolation but as part of the broader organisational and compliance framework. Policies are usually developed out of the need to provide further clarity, or guidelines on standards of performance, than what is prescribed in the Constitution or in law. Therefore, all policies need to be consistent with the organisation’s rules and charitable purposes but also in alignment with the Strategic Plan and overarching vision for the organisation. This relationship approach is illustrated in the diagram⁴⁷ below:



⁴⁷ Diagram developed by Kim Skelton from ideas discussed by Whatarangi Winiata in Appendix to Te Wananga o Raukawa Charter and Diagram Layers of Policy-Making in Boards at Work by Terry Kilmister and John Carver’s policy/governance model.

8.1.3 Policy Checklist

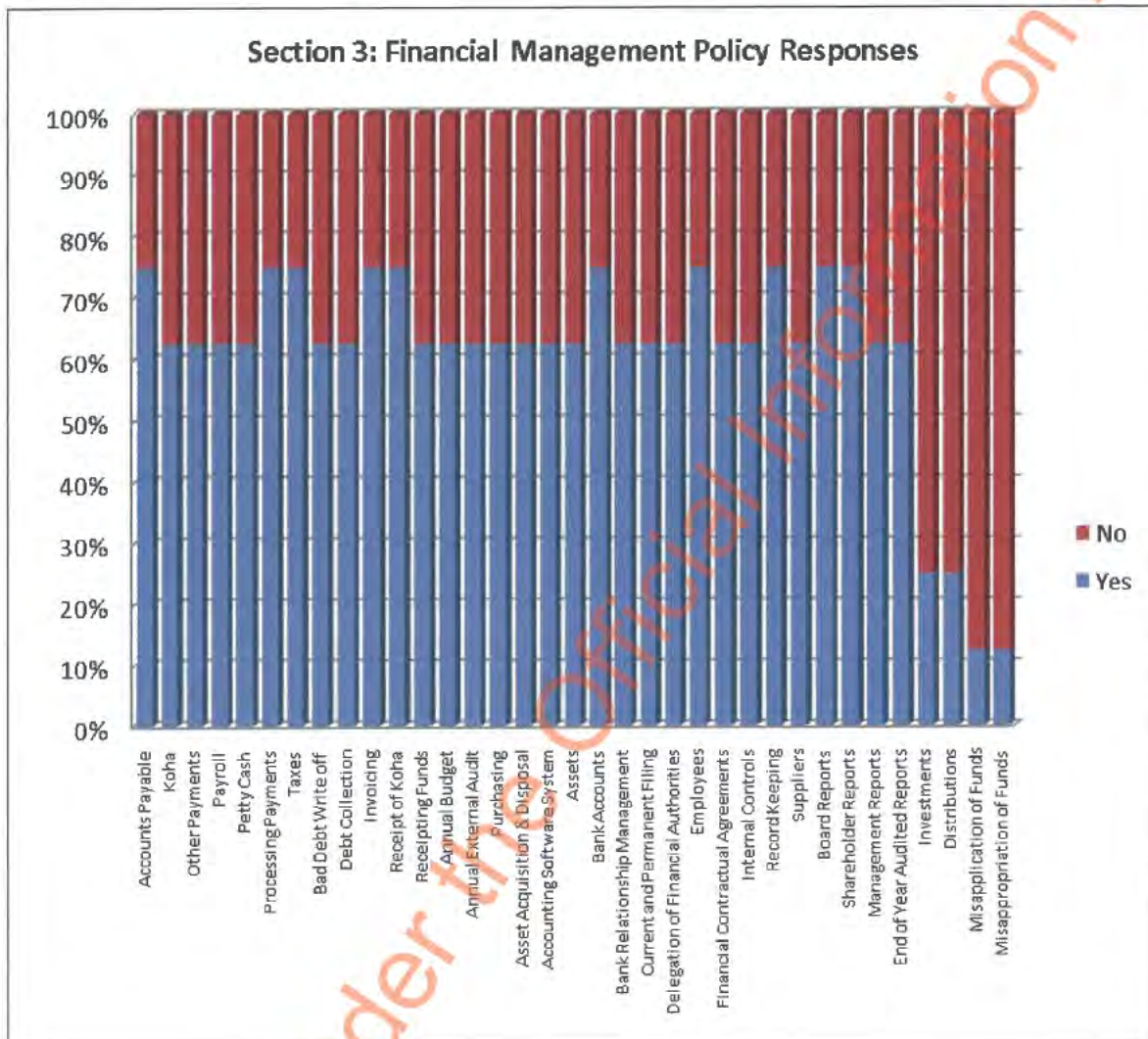
A Policy Checklist⁴⁸ was developed by FOMANA during the pilot programme to assist the 8 Māori charitable entities to review existing policies and to identify any gaps in policy coverage that might increase their risk of non-compliance with charitable purposes. While not all policies will be relevant to all charities, it compels the Board or Governors of your organisation to turn their minds to considering what is, and what is not, necessary for your circumstances.

Legal Compliance Policies	Personnel Policies	Financial Management Policies
<ul style="list-style-type: none"> Code of Behaviour Code of Conduct Code of Ethics Compliance with Legislation Conflict of Interest Delegated Authorities Disaster Mgt, Evacuation & Recovery Filing, Record Keeping & Archiving Good-faith reporting Health & Safety Privacy & Confidential Information Protection of Assets Intellectual Property & Copyright Public Relations Smoke Free 	<ul style="list-style-type: none"> Disciplinary Action Employees Travel & Reimbursement Equal Employment Opportunity Harassment Individual Employment Agreements Leave & Absence Leave Entitlement Performance Management Professional Development Recruitment and Appointment Remuneration Supervision Termination of Employment Time In Lieu Use of Employer Property Volunteers 	<ul style="list-style-type: none"> Expenditure (Accounts Payable, Koha, Other Payments, Payroll, Petty Cash, Processing Payments, Taxes); Accounts Receivable (Bad Debt Write off, Debt Collection, Invoicing, Receipt of Koha, Receipting Funds); Financial Infrastructure (Accounting Software System, Assets, Bank Accounts, Bank Relationship Management, Current & Permanent Filing, Delegation of Financial Authorities, Employees, Financial Contractual Agreements, Internal Controls, Record Keeping, Suppliers);
<p>Information Management Systems Policies</p> <ul style="list-style-type: none"> Information Technology Management Classifying Information & Data Computer and Internet Usage Information Technology Access Control Information Technology Hardware Security Information Technology Outsourcing Information Technology Records Management 	<p>Governance Policies</p> <ul style="list-style-type: none"> Board Membership Board Appointments and Induction Board Committees Board Education & Training Board Performance Evaluation CEO Performance - Board Evaluation Board Meetings and Record Keeping Board Recruitment Board Remuneration Board Responsibilities Reporting to the Board Resignation/Removal From Board Risk Management 	<ul style="list-style-type: none"> Annual Budget Annual External Audit Purchasing Asset Acquisition & Disposal Financial Reporting (Board Reports, Shareholder Reports, Management Reports, Audited Reports); Investments Distributions Misapplication of Funds Misappropriation of Funds
<p>Operations - Communications</p> <ul style="list-style-type: none"> Internal Communications External Communications Media 	<p>Operations</p> <ul style="list-style-type: none"> Customer Service Document Management and Control Drugs & Alcohol Facility Management House Rules Motor Vehicle Use Security 	

⁴⁸ This comprehensive (not exhaustive) Policy list is based on Standards (Australia/NZ) for Risk Management and Compliance Programs, proposed ISO 31000 Standards and principles for Good Governance (US Not for Profit Sector).

Financial Management Policy audit results for pilot programme participants

The Graph below illustrates the results of the Financial policy audit by eight Māori charities in Feb 2009.⁴⁹ It shows good approval rates for the standard range of Finance policies but poor policy uptake for Investments and Distributions (less than 25% of 8 entities), and Misapplication of Funds and Misappropriation of Funds (less than 15% of 8 entities).



Summary of Financial Management Policy Audit




Financial stewardship of resources through systems, policies and processes is central to good governance for any organisation, not least for charitable organisations. Overseas studies have found that a weak financial system was the highest ranking factor for non-compliance by registered charities⁵⁰. Accordingly, FOMANA considers this to be a high priority area for policy development and application of the 3Peez Method.

⁴⁹ As reported in FOMANA Report 3 Risk and Audit Report, 30 March 2009



⁵⁰ As reported in FOMANA Report 2 Research Report, 30 September 2009

8.1.4 Processes

Having identified a need among some of the Iwi entities for a Distributions or Funding policy, this section provides is a practical example of how to apply the 3Peez Method© to determine the key process steps and key people required to implement such a policy. Note this is a sample only and would need to be adapted to fit the specific needs and circumstances of your organisation:

 <p>POLICY Purpose</p>	<p>SAMPLE Charitable Purposes Funding Policy for ON2IT Charity</p> <p>Policy purpose (why is this policy required?) The purpose of this policy is to:</p> <ul style="list-style-type: none"> (a) ensure that ON2IT Charity is compliant with the Charities Act 2005 and all other relevant legislation; (b) provide guidelines to affiliated member organisations or individual members seeking funding for projects or programmes that meet the funding eligibility criteria set out in this policy; (c) provide guidelines for the Board/Governors of ON2IT Charity to make funding decisions in the best interests of the Charity and in strict accordance with the charitable purposes of the Constitution; and (d) set out processes for application, assessment, and accountability. 	
 <p>PROCESS Key Steps</p>	 <p>PEOPLE Key Roles</p>	
<p>Step 1: Draft policy or review existing policy based on Board advice re: Funding priorities and \$ avail.</p>	<p>Manager and Expert Advisors (Legal/Financial)</p>	
<p>Step 2: Approve policy and associated paperwork.</p>	<p>Board / Governors</p>	
<p>Step 3: Open Applications process to members</p>	<p>Manager</p>	
<p>Step 4: Members complete Application Form and attach supporting documentation as prescribed in the policy and listed on the Application Form.</p>	<p>Members who may include:</p> <ul style="list-style-type: none"> Affiliated marae/hapu registered with Commission Affiliated organisations not registered (Risk) Individual members (e.g. to advance education) 	
<p>Step 5: Members sign Declaration agreeing to:</p> <ul style="list-style-type: none"> • use funds only for the charitable purposes and quotes for which they were approved; • provide invoices as proof of payment; • use all funds or return any unspent money; • file an Accountability Report on use of funds; • an audit of their organisation's records; • immediately return all funds if any breach of funding agreement, and to pay costs. 	<p>Person authorised to sign such a Declaration on behalf of the member organisation; or Individual member</p>	

SAMPLE Charitable Purposes Funding Policy for ON2IT Charity continued

 <p>PROCESS Key Steps</p>	 <p>PEOPLE Key Roles</p>
<p>Step 6: Assess applications to check that:</p> <ul style="list-style-type: none"> • all parts of Application form completed; • all supporting documents attached; • eligibility requirements met; • funding level requirements met. • Declaration signed. 	<p>Manager/Staff with delegated authority from Board/Governors</p>
<p>Step 7: Assess applications using Board Checklist with set criteria to be met: e.g Is the funding to be used for purposes that are:</p> <ul style="list-style-type: none"> • compliant with the charitable purposes as set out in the Constitution; • compliant with all other provisions of the Constitution, and NZ law; • aligned to the priorities in the annual plan; • will not put at risk or harm the good reputation of the Charity etc. 	<p>Board/Governors <i>At a properly convened meeting and managing any conflicts of interest.</i></p>
<p>Step 8: Approve or Decline application:</p> <ul style="list-style-type: none"> • subject to any conditions agreed by Board • setting out reasons for declining application • stating if decision is final or if resubmit OK. 	<p>Board/Governors <i>Having turned their minds to their duties at law and considered fully that any decision to fund is in the best interests of the Charity in strict compliance with charitable purposes and rules in Constitution.</i></p>
<p>Step 9: Notice of decision sent to applicants using standard form letters.</p>	<p>Manager/Staff with delegated authority</p>
<p>Step 10: Funding agreement signed:</p> <ul style="list-style-type: none"> • by way of letter for smaller amounts; or • by way of Funding Contract for larger amounts. 	<p>Person authorised to sign such an agreement on behalf of the member organisation; or Individual member</p>
<p>Step 11: Payment made to recipient's bank account and proper financial records maintained.</p>	<p>Manager/Staff with delegated authority</p>
<p>Step 12: Accountability report filed by recipient as specified in the funding agreement.</p>	<p>Person authorised by member organisation; or Individual member</p>
<p>Step 13: Action taken if accountability report not filed or if breach of funding agreement and potential misappropriation of funds.</p>	<p>Manager/Staff with delegated authority Board/Governors Legal Advisors where necessary</p>
<p>Step 14: Monitoring and Evaluation by meeting with recipients and periodic survey of members</p>	<p>Board/Governors Member organisations or Individual members Other Stakeholders</p>

8.1.5 People with Purpose

The third P (for People) is actually the critical component in the application of the 3Peez Method. There is no heart or mind in a set of rules or policies – the magic comes from the people alone.

Without people of skill, honesty and integrity working in the best interests of your organisation, there is a high chance of failure and the risk of non-compliance and resulting financial loss or reputational damage increases considerably. This is true for all levels of the organisation, from the Governors, to finance managers, to the recipients of any benefits flowing from the charity.

Leading by example is a tried and true method for encouraging and instilling a “tika” culture. Governance members and Managers of your organisation should act as personal exemplars. This will be reflected in their words, their actions, and ultimately in the quality and prudence of their decision-making. With ever increasing asset bases, there is a lot at stake for Māori organisations, and especially for charitable organisations, who will be under pressure to distribute that growing tax-free income in a fair and reasonable way. Decision-makers have a tough job and will be held to account, not only by this generation but by future generations in turn. Giving due consideration to their organisation’s vision and values may to assist leaders to get it right (Ka Tika!), for example:

- Vision (including strategy, objectives and outcomes) *Doing the right thing*
- Values (including principles and accountabilities) *For the right reasons*
- Culture (including processes, protocols, and tikanga) *In the right way⁵¹*

Returning to the elements of the FOMANA Charitable Purpose Compliance Model©, let us consider what it means from a “people perspective” – what is your role and duty?

- Constitution and NZ Law:** Know your rules, know your legal duties and follow them always.
- Charitable Purposes:** Apply funds and benefits only to advance your charitable purposes.
- Stakeholders:** Be a responsible Governor & member - Accountability works both ways.
- Charities Commission:** Registering is easy, maintaining it is not.
- IRD and Tax Exemption:** 0% tax or 33% tax – it’s your choice.
- Policies-Processes-People** Approve sound policies and Appoint skilled people to manage them.
- Risks** Be constantly vigilant for risk and mitigate – the impact is not worth it.

In essence, rules, laws and policies do not make the difference - our people do.

⁵¹ Te Puni Kokiri, *Making Decisions: A process guide for Boards*, page 15, www.governance.tpk.govt.nz

8.2 WORKSHOP SESSION

Policies	8.2.1 Whiteboard Exercise
Processes	8.2.2 Questions from Trainer
People	8.2.3 Participant Questions

8.2.1 Whiteboard Exercise

Use 3Peez Method to develop a Policy & process to address a risk issue in your organisation.

8.2.2 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

Governors:

Do you have a policy on how groups can access funding from your organisation?
How do you make sure that distributed funds are used only for charitable purposes?

Management / Staff:

What financial systems do you have in place to ensure proper record-keeping and to monitor accountability for payments?

Beneficiaries / Stakeholders

What are your expectations for receiving funding from your organisation?
What processes would give you confidence that the resources of the organisation were being spent wisely and in compliance with charitable purposes?

8.2.3 Participant Questions

(space for writing your own questions to ask the Trainer)

8.3 ACTION PLAN

Policies
Processes
People

Top 5 actions to improve policies and operational management systems and to manage risk

Your name: _____

Date: _____

Your organisation: _____

What do you (your organisation) need to work on to improve your policies and processes?
What actions do you need to take to ensure the right people do the right thing for the right reasons?

Action to be taken:

Who is responsible: Due Date:

1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Section 9

Risks

9.1.1 Mitigating the risk of “operating outside of charitable purposes”

9.1.2 Danger Zone

9.1.3 Decision tool for managing risk around distribution

9.2 WORKSHOP SESSION

9.3 ACTION PLAN



Section 9: Risks

9.1 KNOWLEDGE & INFORMATION

Risks	9.1.1 Mitigating the risk of "operating outside of charitable purposes" 9.1.2 Danger Zone 9.1.3 Decision tool for managing risk around distributions
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9.1.1 Mitigating the risk of operating "outside of charitable purposes"

A key risk for charities, and one with serious negative financial and reputational consequences, is "operating outside of charitable purposes". The table below shows both the impact of that risk on the charity, and outlines ways in which that risk can be minimised.⁵²

KEY RISK FOR CHARITIES: Operating outside of charitable purposes	
Consequences or potential Impact	Steps to Mitigate Risk
a) Financial challenge (loss of cashflow)	1. Compliance monitoring and reporting.
b) Loss of contracts (as a result of funders excluding on the basis no longer "not for profit")	2. Educate all Trustees of charities requirements. 3. Ensure all staff and all other important stakeholders are aware of the charitable purposes and that this information is readily accessible.
c) Loss of tax exemption	4. Ensure the Constitution is reviewed by the organisation regularly and referred to in strategic and annual business planning processes.
d) Pay back taxes, possibly penalties, interest and then subject to payment of tax thereafter	5. Ensure all business planning documents align to the charitable purposes of the organisation. 6. Ensuring robust processes and policies are implemented, are up to date and followed.
e) Reputation damaged on several levels, personal, professional etc	7. Ensuring the Commission are notified of any changes to the rules, deed or constitution or officers.
f) Adverse media attention	8. Mechanism for reviewing all new activities against Constitution, and contractual obligations. 9. Operating within core activities as identified in the Constitution.

⁵² A comprehensive schedule setting out 8 Risk Factors, Potential impact, and Risk mitigations can be found in the FOMANA Risk and Audit Report 3, 31 March 2009

9.1.2 Danger Zone

WARNING:

You are entering a danger zone of breach where costly and harmful outcomes are likely.

This final element in the FOMANA Charities Compliance Model comes with an R-rating for RISKS. It warns of the grave consequences for those who breach their duties and the law.

It and is intended to shock and compel your organisation to take preventative measures.

Fines and penalties

Charities Act 2005

Administrative penalties

- Non filing of annual returns or change notice

Offences

- Fine of up to \$10,000 for failure to supply or supplying false or misleading information

Income Tax Act 2007

Civil penalties:

- late filing penalties
- non-electronic filing penalties
- late payment penalties
- Shortfall penalties.

Court action - criminal convictions

Trustee Act 1956

Trustee liability for investment losses if breach of trust and failure to exercise care, diligence and skill of prudent business person.

Trustee personally liable for resulting losses if acted dishonestly, recklessly or in breach of trust.

Companies Act 1993

Penalties for failure to comply with Act, section 373

- (1) Offences with fines to \$5,000
- (2) Offences with fines to \$10,000
- (3) Offences with fines to \$50,000 or prison term of up to 2 years
- (4) Offences with prison terms up to 5 years and fines up to \$200,000

Income Tax Act 2007

Criminal penalties:

- Absolute liability offences (\$4,000);
- Obstruction (\$25,000)
- Knowledge offences (\$25,000)
- Evasion offences (up to \$50,00)
- Aiding or abetting another person to commit an offence
- Term of imprisonment up to 5 yrs for certain offences.

Loss of Mana and Damage to reputation

Costs to Governors

- Loss of personal mana
- Removal from office
- Loss of professional standing
- Struck off professional register
- Loss of income
- Disclosure of sensitive information

Costs to Organisation

- Negative publicity
- Irreparable or long-term damage to reputation
- Loss of stakeholder support and trust
- Loss of public confidence
- Loss of funding sources
- Long term or permanent damage to financial viability
- Disruption to ongoing business and services

9.1.3 Decision tool for managing risk around distributions

Principle

Board / Governors must be satisfied that any distribution of funds or benefits is made only to advance the charitable purposes of the organisation and is compliant with the law.

<p>1. <u>Charitable Purpose compliant</u></p> <ul style="list-style-type: none"> • 4 heads of charity • Public benefit • No private profit 	<p>1.1. Will project or programme to be funded meet one or more of the 4 heads of charity:</p> <ul style="list-style-type: none"> • Relief of poverty • Advance education • Advance religion • Other benefit to the community (as specified in your constitution)? <p>1.2. Will it benefit the public?</p> <p>1.3. Are there guarantees provided that no individuals will gain personal financial profit beyond reasonable expenses for services?</p>	<p>Yes Yes Yes</p>	<p>No No No</p>
<p>2. <u>Constitution compliant</u></p> <ul style="list-style-type: none"> • Powers and Authority • Seek Advice • Conflicts of interest • Major transactions 	<p>2.1. Do you have express powers in Constitution to make decision on this distribution of funds?</p> <p>2.2. Have you taken advice as necessary and made proper enquiry?</p> <p>2.3. If it is within definition of a major transaction, have you followed due process?</p> <p>2.4. Have real/perceived conflicts of interest been managed in line with Constitution & Policy?</p>	<p>Yes Yes Yes Yes</p>	<p>No No No No</p>
<p>3. <u>Legal Duties compliant</u></p> <ul style="list-style-type: none"> • Prudent person test • In best interests of Charity 	<p>3.1. Have you exercised skill, care and due diligence and acted as a prudent business person would in making this funding decision?</p> <p>3.2. Will funding this project or programme be in the interests of the Charity and its beneficiaries?</p> <p>3.3. In making this funding decision, have you acted fairly and impartially to and between beneficiaries?</p>	<p>Yes Yes Yes</p>	<p>No No No</p>
<p>4. <u>Legislation compliant</u></p> <ul style="list-style-type: none"> • Solvency test 	<p>4.1. Does your Charity have sufficient funds and would it meet requirements of solvency test?</p> <p>4.2. Have you taken into account financial commitments and maintaining real capital?</p> <p>4.3. Have you complied with all relevant legislation?</p>	<p>Yes Yes Yes</p>	<p>No No No</p>
<p>5. <u>Policy compliant</u></p> <ul style="list-style-type: none"> • Eligibility criteria • Registered charity • Funding levels 	<p>5.1. Does the applicant meet the eligibility criteria for receiving funds or benefits?</p> <p>5.2. If an organisation, is the applicant registered with the Charities Commission?</p> <p>5.3. Is the level of funding for proposed project fair and reasonable in the circumstances?</p>	<p>Yes Yes Yes</p>	<p>No No No</p>
<p>6. <u>Accountability (in & out)</u></p> <ul style="list-style-type: none"> • Declaration by applicant • No misapplication • No misappropriation • To IRD, CC & stakeholders 	<p>6.1. Has the applicant signed a Declaration agreeing to apply funds only for stated purposes and to indemnify the Charity?</p> <p>6.2. Has the applicant demonstrated full and proper accountability when receiving funds previously?</p> <p>6.3. Are you certain that your records will meet requirements for IRD, Charities Commission, Companies Office and any other public or stakeholder accountability purposes?</p>	<p>Yes Yes Yes</p>	<p>No No Yes</p>

9.2 WORKSHOP SESSION

Risks	9.2.1 General Discussion 9.2.2 Questions from Trainer 9.2.3 Participant Questions
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9.2.1 General Discussion

What is your reaction to the “Danger Zone” Penalties table (section 9.1.2)?

Do you know of any real cases where Trustees have been taken to Court and held personally liable for acting dishonestly, recklessly or in breach of trust?

9.2.2 Questions from Trainer

(examples only to prompt interactive discussion and raise potential actions for organisation)

Governors:

Do you conduct regular risk assessments? How often?

What risk management tools do you use in your organisation?

Management / Staff:

How do you mitigate risks of non-compliance with Charities Act?

How do you mitigate risks of misappropriation of funds?

Beneficiaries / Stakeholders

What policies would you expect to see in place to manage risks in your organisation?

9.2.3 Participant Questions

(space for writing your own questions to ask the Trainer)

9.3 ACTION PLAN

Risks

Top 5 actions to improve risk management systems

Your name: _____

Date: _____

Your organisation: _____

What actions do you need to take to improve your policies and internal processes to manage any risk of:

- Non-compliance with charitable purposes;
- Misapplication of funds for non-charitable purposes; or
- Misappropriation of funds distributed.

Action to be taken:

Who is responsible: Due Date:

Action to be taken:	Who is responsible:	Due Date:
1.		/ /
2.		/ /
3.		/ /
4.		/ /
5.		/ /

Section 10

References

10.1 Charities Commission Information Finder - A summary of information sheets and forms published by Charities Commission

10.2 Case Studies of eight Māori charitable entities, 30 June 2009



Section 10: References

10.1 Charities Commission Information Finder - A summary of information sheets published by Charities Commission

10.2 Case Studies of eight Māori charitable entities, 30 June 2009

10.2.1 Ngāti Rārua Atiawa Iwi Trust Case Study

10.2.2 Taranaki Iwi Trust Case Study

10.2.3 Taranaki PHO Ltd Case Study

10.2.4 Te Aroha Medcare Ltd Case Study

10.2.5 Te Atiawa Ki Te Upoko O Te Ika A Maui Potiki Trust Case Study

10.2.6 Te Kaahui o Rauru Case Study

10.2.7 Te Rau Pani Māori Mental Health Trust Case Study

10.2.8. Tui Ora Ltd Case Study

Information Finder

The Charities Commission has developed a series of information sheets that you may find useful in understanding its work, applying for registration, or fulfilling your obligations as a registered charity. You can find the documents by following the blue or grey links embedded in this document, by visiting www.charities.govt.nz, by requesting a copy from our free information line on 0508 242 748 or by emailing info@charities.govt.nz.

An overview of the Charities Commission

Information Sheet	Description	Related Information Sheets & Forms
The Board of the Charities Commission	Profiles each member of the Charities Commission Board.	
Key points for the media	Provides an overview of the Charities Commission, including its functions and purposes, the Charities Register, key people, and contact details.	A guide to the Charities Act

Information about the Charities Act and its implications for organisations

Information Sheet	Description	Related Information Sheets & Forms
Definitions for some commonly used terms	Provides a glossary of some of the terms used by the Charities Commission in its work.	
A guide to the Charities Act	Provides an overview of the Charities Act, its implications for charities, and the registration process.	Charitable purpose The name of your organisation Your rules and the Charities Act Officer certification
The Charities Register: what's in it for the public, funders and other users?	Provides an overview of the Charities Register and explains its benefits for the public, funders and other users.	The Charities Register: benefits for charities
The Charities Register: benefits for charities	Outlines the benefits of becoming a registered charity.	The Charities Register: what's in it for the public, funders and other users?
How the Charities Act affects your tax status	Explains how changes to tax laws affect charities and how charities must register with the Charities Commission to access charitable purpose tax benefits from 1 July 2008.	
How the Charities Act affects charitable trusts, incorporated societies and companies	Explains the implications of the Charities Act for charitable trusts, incorporated societies, and companies.	How the Charities Act affects your tax status
Iwi/Maori organisations and the Charities Act	Provides an overview of the Charities Act and registration for Maori/Iwi organisations.	
Sports and recreation organisations	Discusses the implications of the Charities Act for sports and recreation organisations, whether they need to register with the Commission, and registration requirements.	
International charitable activities and the Charities Act 2005	Outlines the implications of the Charities Act for organisations that conduct charitable activities overseas.	

Released under the Official Information Act 1982

Determining Charitable Purpose

Information Sheet	Description	Related Information Sheets & Forms
<i>Charitable purpose</i>	Discusses the legal criteria the Commission uses when determining if a charity has a charitable purpose.	<i>A guide to the Charities Act</i> <i>The name of your organisation</i> <i>Your rules and the Charities Act</i> <i>Officer certification</i> <i>The relief of poverty - examples of wording for purpose clauses</i> <i>The advancement of education - examples of wording for purpose clauses</i> <i>The advancement of religion - examples of wording for purpose clauses</i> <i>Purposes beneficial to the community - examples of wording for purpose clauses</i>
<i>Charitable purpose and sport and recreation bodies</i>	Discusses the legal criteria for charitable purpose that sports and recreation organisations must meet to be registered under the Charities Act.	<i>Sports and recreation organisations</i>
<i>Advocacy' and the Charities Act</i>	Outlines whether charities can engage in advocacy or have advocacy as a charitable purpose.	
<i>Political activities and registration under the Charities Act 2005</i>	Provides guidance for charities carrying out political activities	

Becoming a Registered Charity

Information Sheet	Description	Related Information Sheets & Forms
<i>Timing it right - when to apply for registration under the Charities Act</i>	Outlines factors charities should consider when deciding when to submit their application.	
<i>Registration checklist</i>	Summarises the information and documents an individual charity needs to provide in their application and lists information sheets they may find helpful.	<i>Form 1 Application for registration as a charitable entity</i> <i>Form 2 Officer Certification Form</i>
<i>Group registration</i>	Explains the group registration option - for organisations that are closely related, with similar charitable purposes - and outlines the registration process for groups. (Includes information on eligibility, powers and responsibilities of members, making changes, and filing Annual Return).	<i>Group Registration: Group Member Information</i> <i>Form 5 Application by a single entity for registration as a charitable entity</i>
<i>Backdating of registration applications</i>	Discusses section 20 of the Charities Act, which allows the Commission to backdate registration.	
<i>The name of your organisation</i>	Explains what is meant by the 'legal name' of an organisation and outlines the Charities Act's criteria for an organisation's name.	<i>A guide to the Charities Act</i> <i>Charitable purpose</i> <i>Your rules and the Charities Act</i> <i>Officer certification</i>
<i>Officer certification</i>	Explains who can be an officer of a registered charity and what to do when officers change.	<i>Form 2 Officer Certification Form</i> <i>A guide to the Charities Act</i> <i>Charitable purpose</i> <i>Your rules and the Charities Act</i> <i>The name of your organisation</i>

<i>Your rules and the Charities Act</i>	Discusses the elements of an organisation's rules and the Charities Act's criteria for rules, including those related to charitable purpose, private profit, and winding up.	<i>A guide to the Charities Act</i> <i>Charitable purpose</i> <i>The name of your organisation</i> <i>Helpful tips for writing rules</i> <i>The relief of poverty - examples of wording for purpose clauses</i> <i>The advancement of education - examples of wording for purpose clauses</i> <i>The advancement of religion - examples of wording for purpose clauses</i> <i>Purposes beneficial to the community - examples of wording for purpose clauses</i>
<i>Helpful tips for writing rules</i>	Provides drafting tips for organisations that need to write rules for their application.	<i>Charitable purpose</i> <i>Your rules and the Charities Act</i>
<i>The relief of poverty - examples of wording for purpose clauses</i>	Provides some examples of wording for 'relief of poverty' charitable purpose clauses that organisations can use as models when drafting their own rules.	
<i>The advancement of education - examples of wording for purpose clauses</i>	Provides some examples of wording for 'advancement of education' charitable purpose clauses that organisations can use as models when drafting their own rules.	
<i>The advancement of religion - examples of wording for purpose clauses</i>	Provides some examples of wording for 'advancement of religion' charitable purpose clauses that organisations can use as models when drafting their own rules.	
<i>Purposes beneficial to the community - examples of wording for purpose clauses</i>	Provides some examples of wording for 'community benefit' charitable purpose clauses that organisations can use as models when drafting their own rules.	
<i>Restricting public access to your information on the Charities Register</i>	Explains section 25 of the Charities Act on restricting public access to information on the Charities Register and outlines the process a charity should follow to have information restricted.	

Information for Registered Charities

Information Sheet	Description	Related Information Sheets & Forms
<i>What to do when something about your charity changes</i>	Outlines when charities need to notify the Commission of changes to their organisation and how to do this.	<i>Restricting public access to your information on the Charities Register</i> <i>Form 3 Notification of changes to charitable entity</i> <i>Form 6 Notification of changes: single entity</i>
<i>Annual Returns under the Charities Act</i>	Explains what an Annual Return is, and when and how to file with the Commission.	<i>Group Registration</i> <i>Form 4 Annual return for a charitable entity</i> <i>Form 7 Annual return for a single entity</i>
<i>Annual Return Checklist</i>	Summarises the information needed to complete an Annual Return	<i>Annual Returns under the Charities Act</i> <i>Form 4 Annual return for a charitable entity</i> <i>Form 7 Annual return for a single entity</i>
<i>Guidelines for promoting your unique registration number</i>	Provides examples of wording that registered charities can use to promote their unique registration number in their print materials and website.	



Ngāti Rārua Ātiawa Iwi Trust

About Ngāti Rārua Ātiawa Iwi Trust (NRAIT)

The Ngāti Rārua Ātiawa Iwi Trust is a statutory Trust with charitable purposes created under the Ngāti Rārua Ātiawa (NRAIT) Empowering Act 1993. In 1853, land originally owned by two hapū of Ngāti Rārua and one hapū of Ātiawa Iwi, was subject to Crown grants made to the then Bishop of New Zealand for the purposes of establishing a school. No school was ever erected on these lands but a school operated intermittently, supported by income earned from the land. The 1993 Act was the culmination of more than 140 years of complaint and grievance by the original owners and their successors. It finally gave effect to the resolution made by the Nelson Diocesan Synod of the Anglican Church to vest the assets of the Whakarewa School Trust Board in a new Charitable Trust for the descendents of the original owners. The Deed of Trust was duly signed on 7 May 1993.

The Trust currently has 1900 registered owners who are the direct descendents of the original owners. It is a hapū-based Trust and the assets are owned communally and not with individual shareholdings like other Māori land incorporations or Trusts. The Trust's core business activity is land management and it has interests in horticulture, pastoral operations and leasing land with a landholding of over 1200 acres, including land in interests across companies and associate interests.



Charitable Purpose Statement in Charity's own Constitution

TRUST

3. The Trustees declare that they shall hold the Trust property UPON TRUST to promote the education, vocational training, economic development, health, religious and spiritual welfare (including the promotion of Māoritanga), social services, hospital and residential care of beneficiaries and the relief of poverty and provision of social support and care for indigent or impoverished beneficiaries in each case in New Zealand.

Charity's Distribution policy and impact on Marae

A second change still in draft and awaiting approval, is the Trust's Distribution Policy. As Chairman, Paul Morgan, noted in the 2008 Annual Report "the Trust has reviewed our distribution process under the new Charities Act regime as it is essential that all distributions of a charitable nature are made to Charities compliant organisations to ensure our status is maintained. This has required the marae we support to complete registration, also with some being registered". The four Ngāti Rārua and Te Ātiawa marae affected are: Onetahua Marae at Takaka; Te Awhina Marae at Motueka (registered charity CC37457); Whakatū Marae at Nelson (registered charity CC38862); and Waikawa Marae at Picton. In addition to being registered as a charity, the funding application from marae will need to specify how the funds will be used, that is, for which one of the four charitable purposes. For example, are the funds to be used for a purpose that:

1. relieves poverty?
2. advances education?
3. advances religion?
4. is beneficial to the community?

John says that he is also drafting a checklist which can be easily used by Trustees to test that applicants meet the charitable purpose criteria. It's another plank in their risk management framework and John notes, "if audited, the Board's completed checklist can be produced as evidence of a sound process". Once the Distributions Policy has been approved and the Education and Marae Grant application forms updated, the Trust intends to communicate the changes to its members via the website www.nrait.co.nz, the quarterly newsletter, the Annual Report, and on the Grant Application Form.

Learnings for other Maori charities

Asked about particular challenges for kin-based Māori charities, John thinks "the big one is to ensure that they operate within charitable purposes and within the auspices of the Charities Act. Where, in the past distributions might have been a lot broader, they really have to put more thought into the process of making those distributions, otherwise they could become taxpayers and with it the loss of assets".

Impact of Charities Act 2005

When the Charities Act came into force in 2005, NRAIT Trustees considered the implications for the Trust and conscientiously decided to bring some of their existing practices into strict alignment with the new legislation. John says the Trustees took this "stringent line" in order to make sure that they kept their charitable status and maintained their tax exemption. One change is to align the broader eligibility criteria for Trustees under their own legislation with the narrower criteria for Officers under the Charities Act 2005. The Trust also maintains clear separation between its charitable (non-taxable) activities and the business (taxable) activities of associated companies (as a minor shareholder). These companies were established as separate legal entities to mitigate the risk of loss of Trust assets.

Charity's involvement in Pilot programme

Ngāti Rārua Ātiawa Iwi Trust was the first of the eight Māori charities to sign up for the pilot programme in September 2007. As John Charleton, Chief Operating Officer, recalls "we wanted to be able to benchmark ourselves against other entities and try to get best practice by comparing our policies and procedures with what others are doing". John is responsible for completing and filing the compliance returns with the Charities Commission including any change of Officers after the Trust's AGM in April and filing the annual returns due in June. He has found the Charities Commission process for annual returns fairly simple. "All you have to do is fill it in and make sure the Officers' names are up to date. It wasn't overbearing and only took an hour at the most to complete".

Charity's Organisation Structure and Links to Iwi community

Under the Trust's constitution, the Board consists of eight trustees, Ngāti Rārua with 80% (6 Trustees) and Te Ātiawa with 20% (2 Trustees). Trustees are elected at the AGM on a 3 year rotation. In 1999, NRAIT decided to separate its activities into two divisions, each with its own clear objective and focus. The first (Koru Investment Group Ltd) is to manage and grow the Trust's commercial assets and opportunities, and the second (Te Whanake) is to give new momentum and focus to social and cultural aspirations. Management of the Trust is undertaken by the Chief Operating Officer, John Charleton, assisted by a small team of 0.5 full time equivalent staff, and some external contracts.



9(2)(b)(ii)

Ngāti Rārua Ātiawa Iwi Trust Board
Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Date: 13/12/2007

Registration number: CC20248

IRD number: Restricted

Annual Return Due Date: 30/06/2010

Charity's street address: 5 Duncan Street, Nelson 7040

Note new Address to be updated on Register:

Charity's postal address: Level 2, Wakatu House, 28 Montgomery Square, Nelson 7040, P O Box 13

Phone: (03)5480770

Fax: (03)5390492

Email:

Website: <http://www.nrait.co.nz>

CHARITABLE PURPOSE Note: Main sectors, activities and beneficiaries are in brackets

Sectors: Arts / culture / heritage)
Accommodation / housing
Education / training / research
Environment / conservation
Economic development

Activities: (Makes grants / loans to individuals)
Makes grants to organisations (including schools or other charities)
Acts as an umbrella / resource body
Provides advice / information / advocacy
Provides buildings / facilities / open space

Beneficiaries: (Family / whanau)
Children / young people
General public

Areas of Operation: Nelson - Marlborough - Tasman

Officer Name & Effective Date:

Paul Morgan
13/12/2007

Russell Thomas
13/12/2007

John Morgan
13/12/2007

Robert Taylor
13/12/2007

Melanie McGregor
13/12/2007

Emma Park
26/04/2008

Rima Piggott
26/04/2008

Warren Kahukura
11/04/2009

Past Officers & Past Since:

Alan Willison 12/04/2009
Andrew Luke 26/04/2008
John Katene 26/04/2008
Robert Shore 12/04/2009

Exemptions:

This charity has been granted an exemption from filing an annual return by 30 June 2008 under Section 43 of the Charities Act 2005. The first annual return is due by 30 June 2009.

Notice of Change: Date: 29/07/2008 Reference: NOC002

Annual Returns: Due Date: 30/06/2008

FOMANA Capital Ltd acknowledge the support of Te Puni Kokiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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Tel +64 4 474 1482 | Fax +64 4 931 9202 |
Email kim@fomana.co.nz | Web www.fomana.co.nz





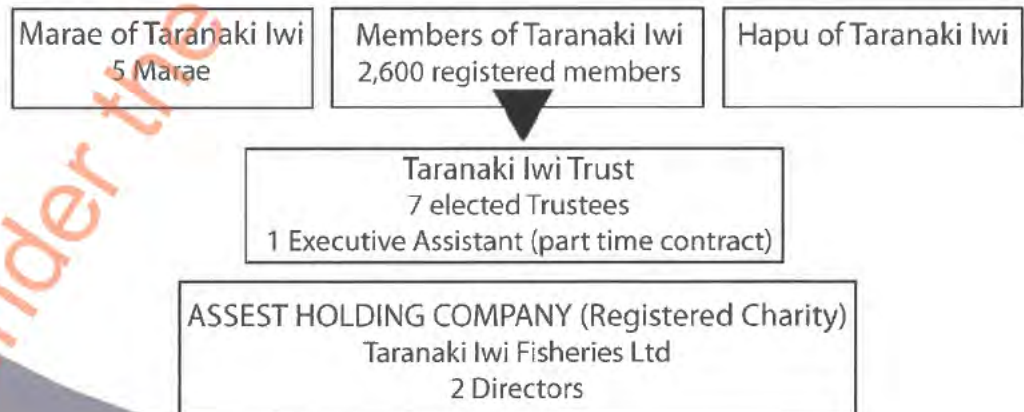
Taranaki Iwi Trust

About Taranaki Iwi Trust Taranaki Iwi Trust was established by Te Rūnanga O Taranaki Iwi Incorporated as the Mandated Iwi Organisation (MIO) for Taranaki Iwi under the Māori Fisheries Act 2004. At the Rūnanga AGM in December 2007, it was agreed to disestablish Te Rūnanga and have just one governing body for the iwi, the Taranaki Iwi Trust. The Deed of Trust was adopted on 3 September 2006 and there were 15 establishment Trustees. Since 2006, Taranaki Iwi Trust has held annual elections under the terms of the Trust Deed and there are now seven Trustees, elected for a term of 3 years by registered adult members, those 18 years and over.

As the mandated body to speak on matters affecting the collective interest of people who whakapapa to Taranaki Iwi, the Trust has certain political, social, cultural and economic responsibilities in addition to the asset management and distribution responsibilities brought about by the Fisheries settlements. The current Vision of the Trust is:

To enhance the Social, Cultural, Economic and Political aspirations of those who are whakapapa to Taranaki iwi.

Charity's Organisation Structure and Links to Taranaki Iwi community



Charitable Purpose Statement in Charity's own Constitution

3. Kaupapa/Purposes

3.1 The purposes for which the Trust is established are to receive, hold, manage and administer the Trust Fund for every Charitable Purpose benefiting Taranaki whether it relates to the relief of poverty, the advancement of education, or religion or any other matter beneficial to the community of Taranaki and all the Members of Taranaki irrespective of where those persons reside.

Clause 3.1 of the Deed of Trust for Taranaki Iwi Trust adopted 3 September 2006

Charity's involvement in Pilot programme Kerry Walsh, Executive Assistant, has been with the Taranaki Iwi Trust since its establishment in 2006 and has been the mainstay for managing the operational aspects of the pilot programme for the Trust. The Trust accepted the invitation to participate in the programme in October 2007 on the understanding that the organisation would benefit by:

- (a) increasing their capability and understanding of the new charities and tax compliance regime;
- (b) protecting their tax exemption status; and
- (c) providing quality assurance systems to their organisation, their beneficiaries and stakeholders.

Charity's compliance and risk mitigation strategies As a new entity, Taranaki Iwi Trust has had to start from scratch to develop its own operating systems, policies and procedures. While the Trust Deed sets out clear rules for some aspects of the Trust's activities (e.g. election process and annual reporting), there are few guidelines for the day to day management of the Trust. To its credit, the Trust has now drafted a substantial Operation Guidelines and Procedures Manual with key areas such as Governance, Membership, Operations (Admin, Finance, HR, and Information Management), Liaison and Advocacy and Subsidiaries. Kerry says the Trust intends also to draft specific policies for Delegation of Authority and Distributions.

To manage any risk of non-compliance with its charitable purposes while the distribution policy is being drafted, the Trust has decided not to make any distributions. Furthermore the Trust is not expecting to receive a dividend from its wholly-owned asset holding Company (Taranaki Iwi Fisheries Ltd) until the 2009-2010 year. Trustees have expressed an interest in learning more about the criteria for Marae to become registered with the Charities Commission and this will be addressed during the next pilot programme training session in August or September 2009.

Charity's distinctiveness and current or future challenges

A particular challenge for this organisation is the constitutional requirement to maintain an up to date register of Iwi members. Kerry says that this is an onerous task, as she needs to keep track of 2,600 registered members, "which can be really difficult if they don't update their addresses". To keep it manageable, she uses the Tuhono service and has recently installed a new membership database in the office. This was critical for the recent mailout to 1347 adult members as part of the Taranaki Iwi Trust's Strategic Planning process. In the words of the Chairman, Tokatumoana Walden "a draft version of the strategic plan will be presented at the next Annual General meeting later this year so our members are aware of our shared vision and future direction". (Letter dated 23 March 2009)

Charity's registration experience

Of the eight participating Māori charities in the pilot programme, Taranaki Iwi Trust has had to wait the longest for official confirmation of their registration with the Charities Commission. This was finally received on 22 June 2009 after more than 18 months in the queue. The Commission did raise one issue about the Trust's name being very similar to another Trust on the companies register but Kerry said that this issue was resolved many months ago. She's pleased that the Trust can now go forward with certainty about its charitable status. She intends to inform Taranaki Iwi members and stakeholders via the Trust's regular communication channels, that is, the quarterly newsletter, the Annual Report, and the Trust's website – www.taranakiwi.org.nz. The other task before her, Kerry says, is to complete the annual return by 30 September 2009 and to notify the Commission of changes in Officers following last year's Trust election. She is hopeful that these compliance processes will proceed smoothly, as they have for the other pilot participants.



9(2)(b)(ii)

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Taranaki Iwi Trust

Listing on Charities Register as at 30 June 2009

www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Officer Name & Effective Date:

Date: 30/06/2008

Tokatumoana Kevin Walden
23/08/2007

Registration number: CC39750

John Niwa
23/08/2007

IRD number: Restricted

Leanne Horo
23/08/2007

Annual Return Due Date: 30/09/2009

Charity's street address: 6351 Surf Highway 45
Pungarehu

David Tamatea
23/08/2007

Charity's postal address: P O Box 40
Pungarehu 4538

Keith Manukonga
23/08/2007

Phone: (06)7638550

CHARITABLE PURPOSE Note: Main sectors, activities and beneficiaries are in brackets

Peter Moeahu
23/08/2007

Sectors: (Economic development)
Education / training / research
Health
Environment / conservation
Marae on reservation land
Community development
Arts / culture / heritage
Sport / recreation

Fay Mulligan
23/08/2007

Activities: (Acts as an umbrella / resource body)
Makes grants / loans to individuals
Makes grants to organisations (including schools or other charities)
Provides advice / information / advocacy
Provides human resources (e.g. staff / volunteers)

PAST OFFICERS

Note: Register has yet to be updated with new Officers following last election in 2008:

Beneficiaries: (Other charities)
Children / young people
Older people
People of a certain ethnic / racial origin
Family / whanau
Hapu Iwi

Past Officer: Peter Moeahu
Current Officer: Diane Ratahi

FOMANA Capital Ltd acknowledge the support of Te Puni Kokiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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About Hauora Taranaki Primary Health Organisation (PHO) Hauora Taranaki PHO is the trading name for the limited liability company (Taranaki PHO Ltd) that was established in April 2003 with a clear not-for-profit status. Hauora Taranaki PHO is one of three PHOs located in Taranaki, and one of 81 nationwide. PHOs vary widely in size and structure but all work to bring doctors, nurses and other health professionals together in the community to serve the needs of their enrolled populations. With an enrolled population of 45,966 as at July 2008, Hauora Taranaki PHO is serving nearly half the total 104,000 plus population in the Taranaki DHB region and is considered one of the leading health care providers within Taranaki.

Charity's Organisation Structure and Links to Māori community Hauora Taranaki PHO has a complex and multi-layered structure. This reflects its accountability back to the community it serves, and also its unique network of primary health care services including GPs, dieticians, midwives, Kaupapa Māori services, and low cost practices with reduced patient charges.

Hauora Taranaki PHO is owned 50% by Taranaki Primary Health Provider Inc. (TPHP Inc) and 50% by Tui Ora Trust (TOT). TPHP Inc was formed early 2003 as a legal entity for a network of 18 General Practices that provide First Level health services across the Taranaki region. TOT was established in 1998 with four appointees from Te Whare Punanga Korero (representing each of the eight Iwi of Taranaki) and four appointees from Kotahitanga (representing sixteen Māori providers).

Charitable Purpose Statement in Charity's own Constitution

The charitable objects for which the Company is established are to:

(a) Improve community health outcomes in the Taranaki region in accordance with the MOH Service Specifications;

(b) Consolidate and integrate the delivery of services to more effectively to meet the needs of the population; and

(c) Pursue any other objectives which the Directors consider are consistent with the objectives set out in paragraphs (a) and (b) above.

Clause 2.2 Constitution of Taranaki PHO Ltd

Charity's involvement in Pilot programme

Pauline Cruickshank, Manager of Hauora Taranaki PHO, welcomed the opportunity to participate in the FOMANA led pilot programme and signed up her organisation in August 2008. When asked why she decided to engage in the programme, Pauline was clear that her Board directors were supportive and "from a personal point of view, she wanted to understand a little more about charitable purposes and the role of the Charities Commission".

As evidence of the PHO's commitment to increasing its capability and understanding of the new charities and tax compliance regime, both Pauline and Board Chairperson, Kura Denness, participated in the initial research phase interview, conducted late August 2008. Their responses indicated a high level of organisational and personal understanding of their charities and tax compliance obligations. For example, they readily identified these factors as important to maintaining tax exempt status:

- Activities meet requirements of constitution;
- Maintain not-for-profit status;
- Registration maintenance;
- Contractual arrangements that support or have evidence of not-for-profit status.

As part of the Risk and Audit phase of the programme (Dec 2008 – March 2009), Pauline carried out a review of the PHO's policies against a checklist of some 100 policies. Pauline said that the exercise forced them to consider the reasons why they did, or didn't, have policies in place. She says "we have changed our attitudes to why we have policies". For example, the charity's Governance Policies showed a mixed result with some areas already covered by the constitution (Board Membership and Board Meetings), one policy that was drafted but not yet approved (Board Performance Evaluation), and other policies that had never been considered but may be in future (Board Induction, Board Remuneration).

Learnings for other Māori charities

When asked what learnings there were from the pilot programme, Pauline was adamant that other charities must "make sure you've got good structures and processes". For Hauora Taranaki PHO, the challenge is to ensure we have a transparent process to stakeholders and Board. "We are a service provider so there's not the same challenge of applications from beneficiaries for distribution of funds. There is no pecuniary gain. Beneficiaries receive a health gain".

Charities Act compliance and relationship with Charities Commission

Pauline found "like everyone, registration with the Charities Commission was a slow one" but the process to submit notice of a change to Directors was "quite straightforward". The challenge will be to ensure that both the Companies office and the Charities Commission annual filing requirements are fulfilled, and not confused.

8 Risk factors relevant to Charities

1. Operating outside "charitable purposes"
2. Misappropriation of Trust funds
3. Missapplication of Trust funds
4. Penalties applied by IRD
5. De-registration by Charities Commission
6. Loss of tax exemption status
7. Loss of reputation
8. Legal action against Trustees/Directors

Hauora Taranaki PHO is well aware of the eight risk factors identified in the pilot programme. As a well-established charity with substantial infrastructure and resources, it has implemented a suite of solid risk management strategies. Overall, Pauline says "I don't think we've got a huge risk by virtue of the fact that it's not policy to pay out to any group". In addition she says "we manage risk through good governance, financial accountability, contracted services for Finance, IT and HR via service level agreements with Tui Ora, and by having a Risk Management Framework including an Audit and Risk committee".



When asked what learnings there were from the pilot programme, Pauline was adamant that other charities must "make sure you've got good structures and processes".

9(2)(b)(ii)

Taranaki PHO Limited

Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered	Officer Name & Effective Date:
Date: 04/03/2008	Eleanor Edwards 25/09/2008
Registration number: CC21526	Julie Brandt 24/09/2008
IRD number: Restricted	Kura Denness 04/03/2008
Annual Return Due Date: 31/12/2009	Diane Jones 04/03/2008
Charity's street address: 36 Maratahu Street, Westtown New Plymouth 4310	Lindsay MacLeod 04/03/2008
Charity's postal address: P O Box 8119, Westtown New Plymouth 4310	Wayne Mulligan 04/03/2008
Phone: 06 759 4064	Jamie Tuuta 04/03/2008
Fax: 06 759 1799	Marie Dwyer 04/03/2008
Email: admin@htpho.co.nz	Past Officers & Past Since:
Website: www.htpho.co.nz	William Hurlow 27/06/2008
CHARITABLE PURPOSE: Note: Main sectors, activities and beneficiaries are in brackets	Patrick Leary 26/09/2008
Sectors: (Health)	Exemptions:
Activities: (Acts as an umbrella / resource body) (Provides advice / information / advocacy)	This charity has been granted an exemption from filing an annual return by 31 December 2008 under section 43 of the Charities Act 2005. The first annual return is due by 31 December 2009.
Beneficiaries: (People of a certain ethnic / racial origin) (Children / young people) (Older people) (People with disabilities) (Family / whanau)	Notice of Change: Date: 01/04/2009 Reference: NOC002 Annual Returns: Due Date: 31/12/2008 Received Link to Return: Exemption
Areas of Operation: Taranaki	

FOMANA Capital Ltd acknowledge the support of Te Puni Kōkiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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Te Aroha Medcare Limited

About Te Aroha Medcare Limited Te Aroha Medcare was set up in 2001-2002 by two registered nurses (Pam Ritai and Christine Nicholas) to meet an identified gap in health care services to Māori. This need was verified by an independent analysis that found there were approximately 4,000 Māori people living in the New Plymouth area who were not registered with a General practitioner. The GP practice, Te Aroha Medcare, was constituted in July 2003 as a limited liability company with a stated charitable status.

In 2005-2006, Tui Ora Ltd and Taranaki PHO Ltd became the sole shareholders of the Company but have retained its original Kaupapa, as expressed in the mission and vision statements below:

- To work cooperatively with our patients in an environment of respect, support and openness;
- To provide and deliver a high quality health service that is accessible, at low cost and works in cooperation with other health service providers to improve our patients' health and wellbeing.

Te Aroha Medcare is an access funded GP Practice. It is one of the seventeen health provider organisations affiliated to Tui Ora, the Māori Development Organisation (MDO) operating as a "Lead Contractor" to meet the specific health needs of Māori in Taranaki. Currently, Te Aroha Medcare provides GP services for 1800 registered clients, 54% of those being Māori, and 72% of those 1800 are classified as "high needs" according to recognised health definition and economic deprivation criteria. In that sense "it is unique in that it is purely a high needs practice with a focus on Māori health, but not exclusively" says Hayden Wano, Chief Executive of Te Aroha Medcare.

Charitable Purpose Statement in Charity's own Constitution

The parties to this constitution wish to establish a charitable entity under the provisions of the Charitable Trust Act 1957 for the objects/aims described in clause 4 of this constitution or to develop, manage and promote health to the best advantage for all. The name of this entity shall be known as TE AROHA MEDCARE LIMITED with CHARITABLE STATUS.

Presentation and Clause 1 of Constitution dated 11 July 2003

Charity's road to registration with the Charities Commission

Te Aroha Medicare had submitted its constitution and application for registration as a charity to the Charities Commission well before the 1 July 2008 closing date. However, the Charities Commission was not completely satisfied with the constitution as submitted, and asked Te Aroha Medicare to strengthen the rules, in particular those relating to payment of dividends and restrictions on private pecuniary profit. Te Aroha Medicare duly sought legal advice and the following written resolution was adopted by the shareholders of the company, satisfying the Commission's registration requirements.

Clause 23A Payment of Distributions (Dividends)

None of the capital or income of Te Aroha Medicare Limited shall be paid or transferred directly or indirectly by way of dividend, distribution or otherwise for the private pecuniary profit of any individual. Provided however that nothing in this clause shall prevent:

- The payment in good faith of reasonable remuneration to any directors, shareholders or employees of Te Aroha Medicare Limited or to any other person for services rendered to Te Aroha Medicare Limited,
- The payment of interest to any person at a rate not exceeding the commercial rate of interest for the time being.

If approved by shareholders, the proposed alteration will affect the rights attaching to the shares held by Tui Ora Limited and Taranaki PHO Limited, being all the shareholders in the Company, in that payment of distributions (dividends) will not be made for the private pecuniary profit of any individual. Payment of distributions (dividends) will therefore be made only to shareholders with charitable status.

Alteration to Constitution by way of written resolution of shareholders of Company dated 26 Sept 2008



Risks facing this Charity and other Māori charities

Hayden was pleased to note that this financial year Te Aroha Medicare "will turn a profit for the first time in its life". It is still vulnerable however and he says the greatest challenge is retention of staff. He also noted that the organisation could suffer from changes in health funding policy that led to a shortening of planning and funding horizons. To manage these risks, Hayden says that they must be clear about what they're trying to achieve, to be able to demonstrate that they're making a difference and getting good results with public funds. And if they had to start paying tax? "We'd have to take a really good look at ourselves. We couldn't continue to do things the way we do them now".

Charity's involvement in Pilot programme Te Aroha Medicare agreed to participate in the pilot programme in August 2008 as part of the collective with Tui Ora Limited and Hauora Taranaki PHO. According to Chief Executive, Hayden Wano, there was also the incentive to ensure that Te Aroha Medicare achieved registration with the Charities Commission.

Charity's Governance and compliance policies and practices Responsibility for compliance with charitable purposes and the Charities Act falls with Governance, which is a common Board of Directors shared with Tui Ora and Hauora Taranaki PHO. Although Te Aroha Medicare is run as a separate legal entity with a separate balance sheet, reports are made to the Board and Hayden provides management support. Financial and HR policies are shared with Tui Ora, however Te Aroha Medicare has its own policies, for example, related to clinical safety practices.

Having said that, Te Aroha Medicare is looking at ways to improve its General Practice and is about to go through an independent Cornerstone accreditation process which, Hayden says, "will show areas where further development is required. It's a voluntary process but will identify how this practice stands up against best practice". Ultimately, it is planned to set Te Aroha Medicare on its feet and place it back into the community, within selected hands to ensure the right outcomes. Hayden recognises that it's not core business for an MDO like Tui Ora but it is one of the elements needed for a good Māori health programme.

the Charities Commission was not completely satisfied with the constitution as submitted, and asked Te Aroha Medicare to strengthen the rules, in particular those relating to payment of dividends and restrictions on private pecuniary profit. Te Aroha Medicare duly sought legal advice and a written resolution was adopted by the shareholders of the company, satisfying the Commission's registration requirements.



9(2)(b)(ii)

Te Aroha Medicare Limited
Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Date: 30/06/2008

Registration number: CC32243

IRD number: Restricted

Annual Return Due Date: 31/12/2009

Charity's street address: 36 Maratahu Street
New Plymouth 4310

Charity's postal address: P O Box 8119
New Plymouth 4310

Phone: 06 759 4064

Fax: 06 759 1799

Email:

Website: <http://www.nrait.co.nz>

CHARITABLE PURPOSE Note: Main sectors, activities and beneficiaries are in brackets

Sectors: (Health)

Activities: (Provides advice / information / advocacy)

Beneficiaries: (General public)
Children / young people
Older people
People with disabilities
People of a certain ethnic / racial origin
Family / whanau

Areas of Operation: Taranaki

Officer Name & Effective Date:

Kura Denness
20/06/2005

Marie Dwyer
04/09/2007

William Hurlow
26/05/2006

Diane Jones
26/05/2006

Patrick Leary
23/06/2006

Lindsay Macleod
26/05/2006

Wayne Mulligan
01/03/2007

Jamie Tuuta
24/11/2006

Exemptions:

This charity has been granted an exemption from filing an annual return by the 31 December 2008 under Section 43 of the Charities Act 2005. The first annual return is due by the 31 December 2009.

FOMANA Capital Ltd acknowledge the support of Te Puni Kokiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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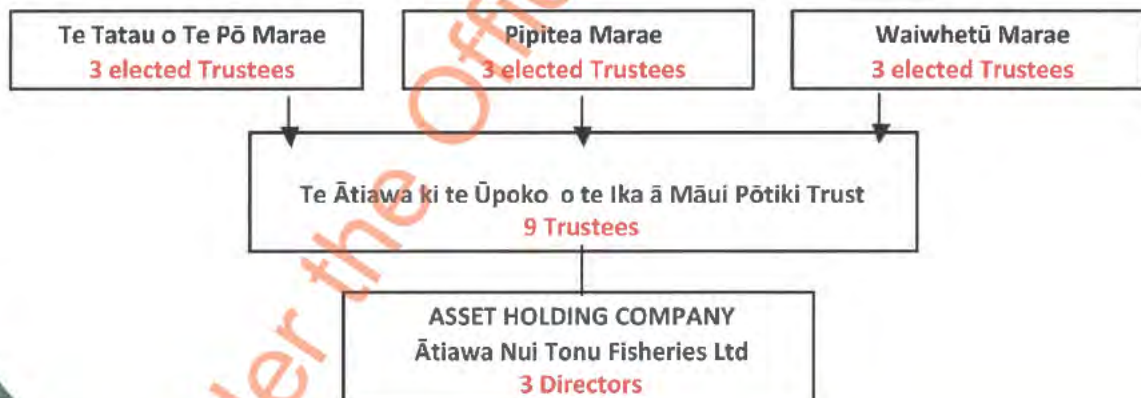
Te Ātiawa ki te Ūpoko o te Ika ā Māui Pōtiki Trust

About Te Ātiawa ki te Ūpoko o te Ika ā Māui Pōtiki Trust

Te Ātiawa ki te Ūpoko o te Ika Trust was born out of the Māori fisheries claims settlement process and is the legal entity or Mandated Iwi Organisation (MIO) for the purposes of the Māori Fisheries Act 2004. Broadly, it is a charitable trust with an interest in both commercial and customary fisheries including the management of fisheries stock and access to fisheries for the iwi of Te Ātiawa ki te Ūpoko o te Ika (Wellington).

Charity's Organisation Structure and Links to Iwi community

In essence, the Trust is structured around three constituent Marae, Pipitea Marae located in Wellington city and Te Tatau o te Pō Marae and Waiwhetū Marae located in Lower Hutt. Three Trustees for each marae are elected on a three year term by registered adult members of the iwi. Currently there are 2000 registered individuals, 1000 adults (18yrs and over) and 1000 children.



Charitable Purpose Statement in Charity's own Constitution

3. Kaupapa/Purposes

3.1 The purposes for which Te Ātiawa ki te Ūpoko o te Ika ā Māui Pōtiki Trust is established are to receive, hold, manage and administer the Trust Fund for every charitable purpose benefiting Te Ātiawa ki te Ūpoko o te Ika ā Māui whether it relates to the relief poverty, the advancement of education, or religion or any other matter beneficial to the community of Te Ātiawa ki te Ūpoko o te Ika ā Māui and all the members of Te Ātiawa ki te Ūpoko o te Ika ā Māui irrespective of where those members reside and for every Charitable Purpose benefiting:

- (a) Māori who are not members of Te Ātiawa ki te Ūpoko o te Ika ā Māui; and
- (b) Members of the community generally.

Clause 3.1 of the Deed of Trust for Te Ātiawa ki te Ūpoko o te Ika ā Māui Pōtiki, dated 2006

Charity's involvement in Pilot programme

Morrie Love, Trustee and Manager for Te Ātiawa ki te Ūpoko o te Ika Trust, said that the Trustees agreed in October 2007 to participate in the pilot programme as they saw that it could assist them in thinking through policies, to identify any gaps, and to check that their accountability processes were sufficient. "We were still in an early development phase and were hopeful that the experience of the other participating charities would be useful".

The initial part of the pilot programme involved a research interview with Morrie Love and fellow Trustee, Peter Reweti. The objective was to identify the level of organisational understanding and practice with regard to the Trust's obligations under the charitable purposes and tax compliance framework (Charities Act 2005). From these interviews, and additional research on the role and authority of the Charities Commission and IRD, a substantial report was produced by FOMANA and distributed for the information of all eight participating pilot charities. Te Ātiawa ki te Ūpoko o te Ika Trust has since completed a policy audit and received a risk profile based around the 8 identified risk factors for Charities:

1. Operating outside "charitable purposes"
2. Misappropriation of Trust funds
3. Misapplication of Trust funds
4. Penalties applied by IRD
5. De-registration by Charities Commission
6. Loss of tax exemption status
7. Loss of reputation
8. Legal action against Trustees/Directors

Risks to Charity and mitigation strategies

Morrie thinks that the greatest risk facing the Trust is related more to its size and capacity and that "it's inefficient to operate at this level and income generating capacity – it's too small". The way around this he thinks could be to look at other models, for example, working with other iwi and sharing the management of fishing quota. There is also a reasonable degree of commercial risk in the fishing industry and this is managed by both the Trust and its wholly owned Asset Holding Company through wise, strategic decision making. The Trust is also considering a reduction in the number of Trustees to six Trustees. Te Ātiawa ki te Ūpoko o te Ika Trust is not alone in facing these challenges, which apply to other MIOs and smaller Māori charities. If there are learnings from this pilot programme, Morrie suggests that others "look carefully at the implications for charitable purposes and develop a distribution policy".



Communications with
Charity's beneficiaries and
stakeholders

The Trust issues an occasional news sheet "Te Iti me te Rahi" to keep its stakeholders informed of strategies and events. An Annual Report and audited Financial Reports are produced in accordance with the rules of the Trust Deed and these are presented to the iwi members who attend the Annual General meeting. For transparency and accountability, the amount available annually for distribution is decided upon at the AGM.

Charitable Purpose Policy
development

Te Ātiawa ki te Ūpoko o te Ika Trust has taken the initiative to draft a policy designed to keep the Trust compliant with the charitable purpose Kaupapa of its Trust Deed. Morrie says that the policy is 'a work in progress' but will contain rules around distribution of Trust funds with strict requirements for application of funds for charitable purposes only.

One way they intend to manage a potential risk of 'misapplication' is to require that applicants are registered charities, or in the case of individuals, that funds are applied for the advancement of education or other charitable purposes.

Morrie has indicated that the policy will look at different classes of beneficiary. For example, the three constituent marae, iwi organisations for the enhancement of customary fisheries in the rohe, and individual members for educational advancement. At this stage, Pipitea Marae is the only constituent marae that has confirmed registration with the Charities Commission.



9(2)(b)(ii)

Te Ātiawa ki te Ūpoko o te Ika ā Māui Pōtiki Trust

Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Date: 30/06/2008

Registration number: CC38312

IRD number: Restricted

Annual Return Due Date: 31/03/2010

Charity's street address: 15 Balmoral Terrace
Wellington 6021

Charity's postal address: P O Box 16147
Wellington 6242

Phone: 64 4 9709841

Fax: 64 4 9709841

Email: morrie@rauakura.co.nz

Website:

CHARITABLE PURPOSE: Note: Main sectors, activities and beneficiaries are in brackets

Sectors: (Customary Fisheries)
Environment / conservation
Community development
Economic development

Activities: (Makes grants to organisations (including schools or other charities))
Sponsors / undertakes research

Beneficiaries: (Marae)
Children / young people
People of a certain ethnic / racial origin
Family / whanau

Areas of Operation: Wellington - Wairarapa

Officer Name & Effective Date:

John Warren
22/03/2006

Anania Randall
22/03/2006

Wayne Mulligan
22/03/2006

Te Rira Puketapu
22/03/2006

Joanne Korent
19/11/2006

Ihaia Puketapu
19/11/2006

Peter Reweti
10/11/2007

Morris Love
22/03/2006

Exemptions:

This charity has been granted an exemption from filing an annual return by 31 March 2010 under Section 43 of the Charities Act 2005. The first annual return is due by 31 March 2010.

FOMANA Capital Ltd acknowledge the support of Te Puni Kōkiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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Email kim@fomana.co.nz | Web www.fomana.co.nz





Te Kaahui o Rauru Ngaa Rauru Kiihahi Iwi

About Te Kaahui o Rauru Te Kaahui o Rauru is the iwi representative organisation for Ngaa Rauru Kiihahi Iwi located in South Taranaki with its office in Whanganui. Te Kaahui o Rauru was established on 27 November 2003 with the signing of the Deed of Settlement with the Crown, culminating four years hard work by the Iwi Authority, Ngaa Rauru tupuna, and uki to secure redress for wrongs committed by the Crown. The Constitution document (Te Kawa o Te Kaahui o Rauru) sets out the guiding principles of Te Kaahui o Rauru: *Kia rangatira te tuu a Te Kaahui o Rauru hei roopu whakatiinanai i ngaa rau wawata o te iwi Maaori, o te motu hoki.*

Charity's Organisation Structure and Links to iwi community Te Kaahui o Rauru is a marae based organisation with 12 constituent marae each electing 2 Marae Delegates (Trustees) to the Governance Board. Currently there are 2,600 registered adults (18yrs and over).



Charitable Purpose Statement in Charity's own Constitution

3. Objects of Te Kaahui o Rauru – specific objects set out in clause 3.1(a) – 3.1(o)
3.1 (p) any such charitable programmes and facilities that the Marae Delegates may at their discretion determine as being necessary for the promotion of any or all of the above objects.

4. Powers of Marae Delegates

4.1. Furtherance of the Objects

The Te Kaahui o Rauru Fund must be applied and used exclusively by the Marae Delegates for the Objects, and any other matters that benefit Uki, as the Marae Delegates from time to time decide upon their absolute discretion, subject to the need to maintain one or more charitable purposes.

Clauses 3 and 4 of Te Kawa o Te Kaahui o Rauru v.4, dated June 2007

Clause 4.1 amended to meet Charitable Tax Status by addition of words underlined (TKoR resolution #05/0240)

Charitable Purpose compliance and generic Distribution Policy

It is clear from the review of their policies and practices during the pilot that Te Kaahui o Rauru has a sound framework for maintaining compliance with charitable purposes and retaining tax exemption. Following advice from their lawyers, the organisation has adopted a comprehensive, coherent, and practical Distribution policy which requires Marae Delegates to take the following steps in relation to decisions on Distributions:

1. Charitable Objectives – satisfy themselves that Distribution furthers TKOR's charitable objectives;
2. Distribution Register – record specific charitable objectives of TKOR;
3. Resolution – approval and authorisation of Marae Delegates of Distribution to intended recipient;
4. Paper Trail and Audit – TKOR letter to intended recipient setting out conditions of Distribution;
5. Indemnity – Deed of undertaking and indemnity from intended recipient that it will apply Distribution for charitable purposes.

For ease of application, the Policy contains appendices with Key Definitions of TKOR Charitable Objectives, definition of Major Transactions, and useful Template forms for the Register, Marae Delegate Resolution, TKOR letter to recipient, and Deed of Indemnity from Recipient.

To date, Hayden says that the policy has only been applied to distributions to marae. Funds available for that distribution are limited to retained earnings from Fisheries income and are applied equally across 12 marae. There has been discussion on education grants and Hayden notes "at the moment we don't have an Education Grants policy but we are working on that in future. We are developing an iwi education profile and looking at education attainment as part of our 12 year Education Strategy (2008 – 2020)... the vision is to excel in education, to revitalize Ngaa Raurutanga through education". Investing in their tribal development and Te Reo is also a key priority and Hayden was justly proud of the recent achievement that saw 45 taurira graduate as fluent reo speakers after a one year full-time programme, designed by Ngaa Rauru and delivered on Ngaa Rauru marae. This fits well with the organisation's vision, its strategic objectives, and its charitable purposes.

Risks to Charity

According to Hayden, the greatest risk facing Te Kaahui o Rauru at present is the recession, which has meant the organisation has had to "put on hold" some of the projects it had planned to deliver this year. "We need to know how our people are faring in terms of jobs and what assistance we might be able to provide, to help them through these times...to see what we can do in our role as Kaitiaki". Te Kaahui o Rauru will hold a summit in August 2009 to discuss those specific issues. This hui is in addition to the annual hui-a-iwi in July and the annual survey where Iwi members are asked "Are we headed in the right direction?"

Charity's involvement in Pilot programme and registration of Marae with Charities Commission

Te Kaahui o Rauru joined the pilot programme in September 2007 at the initiation of former Kaiwhakahaere, Marty Davis. At the time Marty was developing a generic constitution, compliant with the Charities Act, which could be used by the 12 constituent marae for the purposes of becoming registered charities. Two years on, the Chairperson, Hayden Potaka, is pleased to note that most of the 12 marae have now been registered with the Charities Commission, or are in the backlog, awaiting registration. Hayden says that the Commission has been particularly interested in the "winding up" clauses, asking what will happen to the Trust funds or Marae assets if the marae ceases to exist. This caused some concern because "you can't really wind up a marae" Hayden recalls their initial reaction. However, these issues have been sorted to the satisfaction of the Commission and the marae. Te Kaahui o Rauru is keenly aware of "doing things in line with the Charities Commission" says Hayden and in terms of participating in this pilot programme, "if we're able to do things better, more efficient and effective for us, that would be great".

Learnings for other kin-based Maori charities

Hayden was adamant that "following the process in terms of legal compliance is quite crucial". He also advocated practical support for places like marae. For example, Te Kaahui o Rauru offered a generic constitution to its marae to facilitate registration, it provides templates for marae to use to access charitable funds, and it is working on a programme to provide marae with accounting and financial management assistance. Support services like these make it easier for marae to comply and to safeguard all parties.



9(2)(b)(ii)

Te Kaahui o Rauru

Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Date: 30/06/2008

Registration number: CC34302

IRD number: Restricted

Annual Return Due Date: 30/09/2009

Charity's street address: Suite 17
Wicksteed Terrace
Whanganui 5001

Charity's postal address: P O Box 4322
Whanganui 5015

Phone: 06 3484894

Fax: 06 3484087

Email:

Website: <http://www.ngarauru.org.nz/>

CHARITABLE PURPOSE Note: Main sectors, activities and beneficiaries are in brackets.

Sectors: (Iwi development)
Education / training / research
Environment / conservation
Social services
Arts / culture / heritage
Economic development
Fund-raising

Activities: (Iwi Development)
Makes grants to organisations
(including schools or other charities)
Provides advice / information / advocacy

Beneficiaries: (Ngaa Rauru uri)
Children / young people
Other charities
Older people
People with disabilities
People of a certain ethnic / racial origin

Areas of Operation: Family / whanau
Manawatu - Wanganui

Officer Name & Effective Date:

Kelvin Luke 09/12/2004

Te Pokiatua Ashford 09/02/2004

Perry Soloman 09/12/2004

William Gawler 09/12/2004

Bop Ngataierua 09/12/2004

Karen McGregor 09/12/2004

Watene Davis 09/12/2004

Mihipepene Davis 09/12/2004

Ngapari Nui 09/12/2004

Te Ringa Te Awhe 09/12/2004

Gloria Ashford 26/06/2005

Darryn Ratana 30/07/2006

Valencia Soloman 30/07/2006

Te Hui Hamilton 30/07/2006

Carolyn Young 30/07/2006

Jason Hina 30/07/2006

Toko Tutahione 30/07/2006

Desmond Canterbury 24/09/2006

Yvette McGregor 24/09/2006

Nan Pirikahu-Smith 17/01/2007

Sharlene Tapa-Mosen 03/02/2007

Tame Rangihaeata 31/03/2007

Hayden Potaka 30/07/2006

Te Aroha Waitai 09/02/2004

Registered status of Marae

As at 30 June 2009, a search of the online Charities Register showed that seven marae of Ngaa Rauru Kiihahi have been registered. It is understood that the other five marae are in the process of registration

FOMANA Capital Ltd acknowledge the support of Te Puni Kokiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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About Te Rau Pani Māori Mental Health Trust (Te Rau Pani)

Te Rau Pani traces its origins to a 2001 joint venture between three parties, Te Whare Puawai o te Tangata Trust, Taranaki District Health Board (TDHB), and Raumano Mental Health Trust, followed in 2002 by a joint agreement with the latter two parties only. By 2004, it was decided to establish a Charitable Trust and the Te Rau Pani Māori Mental Health Trust was constituted by Deed of Trust signed by five Original Trustees on 18 June 2004.

Te Rau Pani provides two distinct services to the Taranaki community:

1. Māori mental health service

A specialist Māori Mental Health Service based upon an integrated delivery model of Kaupapa Māori and Best Practice Principles.

2. Employment Service

A case managed programme designed to get paid employment for Taranaki people with experience of mental illness, that best suits the person's needs.



Charitable Purpose Statement in Charity's own Constitution

4. Objects of Trust (specific to the provision of Maori mental health services within the rohe of Taranaki).

5. General Objects:

(a) Those of a "Charitable Trust" (as those words are understood under the law applicable to New Zealand); in particular to provide financial and other assistance to and for the provision of Maori mental health services for the Taranaki Maori community.

(b) Recreational and similar purposes set forth in Section 61A of the Charitable Trusts Act 1957 or any Act of amendment passed in substitution therefore.

(c) "Charitable purposes" as those words are defined according to the general law of New Zealand.

(d) To perform all such other acts, matters or things as are incidental or conducive to the attainment of the foregoing objects.

Clauses 4 and 5 Deed of Trust Te Rau Pani Maori Mental Health Trust

Charity's involvement in Pilot programme

When Te Rau Pani joined the pilot programme in August 2008, it was Warren Nicholls, as Acting General Manager, who agreed to participation. He had just completed an internal review of the policy compliance position of Te Rau Pani and his initial assessment was that some work was needed in this area. The FOMANA programme was seen as a timely opportunity for external review and support for Te Rau Pani. Warren's completion of the research phase questionnaire and interview was the first step in that external review process.

In early 2009, Hinemoerangi Ngatai Tangirua was appointed to the position of General Manager and consequently took on the management of the pilot programme. One of her immediate tasks was to complete the Policy checklist requiring her to become quickly and intimately acquainted with the extent and status of Te Rau Pani's policies across six areas (Legal Compliance, Governance, Financial Management, Information Management Systems, Operations and Personnel). Following that policy review exercise and driven strongly by the Quality Health NZ accreditation process, Hinemoerangi says that "there's been some changes in the organisation and Te Rau Pani has made a commitment to make improvements". For example:

- Board membership has been changed;
- A lot of policies have been reviewed and updated;
- We have put in good systems in terms of quality improvement;
- We have made changes to our financial management.

Participating in the pilot programme meant that Te Rau Pani didn't have an internalised focus only. Using the Risk and Audit Report and Risk Profile for her organisation, Hinemoerangi was able to highlight for her Board of Trustees the policy areas covered by the Trust Deed, policy areas where improvements had been made in the last 18 months, and areas that required further policy development. As a result, she says that the Board has decided to look at drafting a policy for Investments. There is a growing sense of satisfaction in the lifting of standards and Te Rau Pani can be justly proud of not only retaining the Quality Health accreditation it has held since 2004 but also achieving a "5" rating, the highest being "7".

Learnings for other Māori charities

Understanding the risk and impacts of misapplication of Trust funds was a big learning for individuals in Te Rau Pani and also to know that failure to operate within your charitable purposes could mean, not only loss of tax exemption, but also a hefty tax bill that might go back for years, possibly with penalties being applied. Hinemoerangi was of the opinion that "there's a lot of work to be done" to raise awareness and educate Maori charities about these issues. For Te Rau Pani, she would like to see in 12 months "that we have credibility and a profile of compliance to account for and support delivery of service, not only to adults, but also that we are ready to engage and cater to children and adolescents affected by mental illness and/or addiction".

8 Risk factors relevant to Charities

1. Operating outside "charitable purposes"
2. Misappropriation of Trust funds
3. Misapplication of Trust funds
4. Penalties applied by IRD
5. De-registration by Charities Commission
6. Loss of tax exemption status
7. Loss of reputation
8. Legal action against Trustees/Directors

Hinemoerangi and her team set aside time to look at each of the 8 risk areas, the potential impacts of those risks on their organisation, and what risk management strategies were appropriate for Te Rau Pani. Where they found gaps or grey areas in their policies or compliance practices, they are working towards addressing these and in her opinion, "we're confident that we are on the journey for mitigating risk". Asked what would happen to the organisation if it had to start paying tax, Hinemoerangi suggested that it would negatively impact on the services that Te Rau Pani could provide and would undoubtedly increase costs, meaning people would miss out as "our consumers wouldn't be able to afford to pay".



Charity's distinctiveness and unique features

Te Rau Pani provides services right across the Taranaki region, has a strong relationship with other Kaupapa Māori providers, and has direct access to the inpatient service of the TDHB. Hinemoerangi notes also that "we have kaumatua who keep us realistically connected to Taranaki iwi". While she says "the service is primarily focussed on Māori, we do not exclude anyone who needs our mental health services". Te Rau Pani's key beneficiaries are the top 9 percent of those with acute mental health needs in Taranaki. With a Maori population of around 15,000 in Taranaki, there are potentially 1350 Tangata Whaiora in that highest threshold of need. Hinemoerangi pointed out that "over the last year we've supported 104 people", so it would seem that there may be many who are missing out on services.

9(2)(b)(ii)

Te Rau Pani Maori Mental Health Trust

Listing on Charities Register as at 30 June 2009
www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Officer Name & Effective Date:

Date: 30/07/2007

Mihi Kahu
25/07/2007

Registration number: CC10717

IRD number: Restricted

Warren John Nicholls
25/07/2007

Annual Return Due Date: 31/12/2008

Christine Henare
25/07/2007

Charity's street address: 36 Maratahu Street
New Plymouth 4310

Paula Hakesley
25/07/2007

Charity's postal address: PO Box 5131, Westtown
New Plymouth 4343

Raukawa Rangihua Mamaeroa Simon
25/07/2007

Phone:

Fax:

Email: terry@teraupani.co.nz

Website:

Sectors: (Maori Mental Health)
Education / training / research
Community development
Health
Social services
Employment

Activities: (Provides services (e.g. care / counselling))
Acts as an umbrella / resource body
Provides advice / information / advocacy

Beneficiaries: (Other charities)
Children / young people
Older people
People with disabilities
People of a certain ethnic / racial origin
General public
Family / whanau
People of Maori origin

Current Officers not yet listed on Charities Register:

Moira Irving (Chairperson) - Appointed
Ngawai Henare - TDHB nominee
Peter Moeahu - Tui Ora nominee
Will Edwards - Appointed
Paula Hakesley - Appointed

Annual Returns: Due Date:31/12/2008

Areas of

Operation: Taranaki

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About Tui Ora Limited Tui Ora Ltd was officially launched 1 July 1998 following extensive consultation involving Iwi health representatives from Te Whare Punanga Korero and provider organisations. The Company was set up as a **not-for-profit** business and its ownership has been a hotly contested debate for many years. It is currently owned by the Tui Ora Trust, which is made up of 4 Māori Provider representatives and 4 Iwi representatives, each individually bound by the Trust constitution to act in the interests of Tui Ora.



Tui Ora Ltd is a Māori Development Organisation (MDO) operating as a "Lead Contractor" with a 'for Māori by Māori' focus, on the specific needs of Māori in Taranaki. There are a total of seventeen health provider organisations currently affiliated to Tui Ora. Tui Ora has also developed working relationships with non-affiliated Māori health provider organisations as well as non-Māori health care providers. It is an umbrella organisation for:

- Māori Health and Social Service Providers, providing support in contract negotiations with funders
- Māori workforce development.

Hayden is clear that the programme offers a really good business opportunity for other charities. He says that "one can see that it's providing a good discipline in the organisation by promoting best practice and the use of a policy checklist to identify areas for improvement".



Charity's involvement in Pilot programme

Hayden Wano, Chief Executive, says that Tui Ora was compelled to join the pilot programme as early as September 2007, partly due to Board support and encouragement, and mostly because it was critical that we had certainty about our charitable status and secured our registration. "We had some policy learnings during the registration process but it was pretty smooth".

We are distinctive from other participants in that, while we have a focus on health, in broader terms we work across agencies and have an interest in providing infrastructure support to iwi. As evidence of the depth and quality of its infrastructure resources, Tui Ora Ltd has provided contracted services to the programme in the form of tax and charities research, policy audits, risk profile development, and Information Technology applications.

Risks to Charity and risk management strategies

The greatest risk to Tui Ora is the ongoing uncertainty and debate over ownership because it's so volatile. That risk has been managed by a number of strategies, one being having a robust protocol for appointment of Directors (not representation based). As Hayden observes "we've managed to take tension out of the AGMs based on protocols of communication and strong planning processes".

There are also the regular reporting processes that provide accountability and transparency to stakeholders. Tui Ora produces quarterly and annual reports and Hayden also attends hui with Te Whare Punanga Korero, the iwi health forum with representatives from each of the eight Taranaki iwi.

Tui Ora Ltd works hard to maintain alignment with the constitution which is often pulled out and referred to especially during annual and strategic planning sessions and when questions are raised, often as a result of changes in the shareholding structure.



Learnings for other Māori Charities Hayden is clear that the programme offers a really good business opportunity for other charities. He says that "one can see that it's providing a good discipline in the organisation by promoting best practice and the use of a policy checklist to identify areas for improvement".

The major learning for Tui Ora Ltd and other Māori charities is in "realising that there's a real incentive, the monetary one, to retain tax exemption". He acknowledges this FOMANA led initiative as a positive one, it's an area that could easily be overlooked and left to drift.

Looking forward 12 months, Hayden has two goals, one being better performance and to reduce the variability in staffing. "When one person goes it can stop business in its tracks". The other is to drive different models of care, principally "to develop a continuity model of care rather than one-offs".

Charitable Purpose Statement in Charity's own Constitution

4. Objects of Company (related to improvement of health status of Maori and others in the Taranaki community.

4.1 (b) To act at all times in the interests of its shareholder for so long as the shareholders are entities which have been approved as having charitable status in terms of Revenue Acts administered by the Inland Revenue Department.

6. General Objectives (in addition to prime objects in clause 4)

(a) Those of a "Charitable Trust" (as those words are understood under the law applicable to New Zealand); in particular to provide financial and other assistance to and for the provision of Maori Health services in the Taranaki Maori community.

(b) Provision of facilities for public recreation and similar purposes set forth in Section 61A of the Charitable Trusts Act 1957 or any Act or Amendment passed in substitution therefore.

(c) "Charitable purposes" as those words are defined in both section 2 and section 38 of the of the Charitable Trusts Act 1957 or any Act or Amendment passed in substitution therefore so far as those terms are not inconsistent with what is charitable according to the general law of New Zealand and so far as those purposes are also acceptable to the Inland Revenue Department for the purposes of exemption from the Revenue Acts.

(i) To perform all such other acts, matters or things as are incidental or conducive to the attainment of the foregoing objects PROVIDED HOWEVER that if by reason of any alteration in the law relating to income tax it is at any time necessary to amend such purposes in order to preserve the right to exemption from income tax of the kind referred to in Sections CB4(1)9c) and CB4(1) (e) of the Income Tax Act 1994 such purposes shall thereupon be deemed to be amended to the extent necessary.

Clauses 4 and 6 Constitution of Tui Ora Limited

9(2)(b)(ii)

Tui Ora Limited

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www.register.charities.govt.nz/CharitiesRegister

Status: Registered

Officer Name & Effective Date:

Date: 30/07/2007

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Raukawa Rangihua Mamaeroa Simon
25/07/2007

Phone:

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Older people
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Family / whanau
People of Maori origin

Current Officers not yet listed on Charities Register:

Moira Irving (Chairperson) - Appointed
Ngawai Henare - TDHB nominee
Peter Moeahu - Tui Ora nominee
Will Edwards - Appointed
Paula Hakesley - Appointed

Exemptions:

This charity has been granted an exemption from filing an annual return by 30 December 2008 under Section 43 of the Charities Act 2005. The first annual return is due by 30 December 2009.

Areas of

Operation: Taranaki

FOMANA Capital Ltd acknowledge the support of Te Puni Kōkiri for this pilot programme. For more information, contact Wayne Mulligan (CEO) or Kim Skelton (Project Manager)

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