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ORGANISATIONAL STRUCTURES



community resource kit



For full details and contents of the kit please read the introduction at www.community.net.nz/how-toguides/crk.

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contents



INTRODUCTION

What's in this section?
Words used
"Keeping it Legal E Ai Ki Te Ture"

CHARACTERISTICS OF DIFFERENT LEGAL STRUCTURES

UNINCORPORATED GROUPS

Some key features
Rules and processes
Limitations

UMBRELLA GROUPS

FORMAL ORGANISATIONAL STRUCTURES

Initial considerations
Advantages
Benefits of incorporation

- Separate legal identity
- Perpetual succession
- Limited liability

 Choosing the right structure

INCORPORATED SOCIETIES

Some key features
Rules

- Minimum requirements

 Final tips on rules
Process for setting up an incorporated society

Please note that the information in this section is not intended to be legal advice and the law can change regularly. Therefore the authors of this publication take no responsibility for the results of any action taken on the basis of information contained in this section or for any errors or omissions. Instead readers should talk to a lawyer or their local Community Law Centre for further legal advice. More detailed information on organisational structures can also be obtained as indicated in this section.

CHARITABLE TRUSTS

Different types
Charitable purposes
Key features
Rules

- Rules checklist*

 Process for setting up a registered charitable trust

OTHER ORGANISATIONAL STRUCTURES

Companies
Co-operative companies
Industrial and provident societies
Five types of Māori land trusts

- Pūtea trusts
- Whānau trusts
- Ahu whenua trusts
- Whenua tōpū trusts
- Kai tiaki trusts

CHARITIES COMMISSION

Functions
Registration

- Name
- Charitable purposes
- Qualification of officers
- Tax exemptions

DISSOLUTION AND WINDING UP

Incorporated societies
Charitable trust boards
Companies

WHERE TO GO FOR MORE INFORMATION

Publications
Online resources

introduction



what's in this section?

This section provides some basic guidance and tips on a broad range of topics related to organisational structures for community groups. We look at the more common formal structures, such as incorporated societies and charitable trust boards, as well as the less common, such as companies and Māori land trusts. Informal unincorporated structures are also covered.

The Charities Commission and related topics are discussed as well as dissolving your organisation and liquidation.

words used

We have found that the terminology or jargon can be quite confusing when trying to describe the different ways in which community groups can organise themselves.

Both the terms "legal form" and "organisational structure" are used throughout this section and are intended to mean the same thing. Both include informal unincorporated groups as well as more formal structures such as incorporated societies, charitable trusts etc. Another term that is sometimes used is "entity" for example "legal entity".

Organisations that are registered under the Charitable Trusts Act 1957 may be referred to as either "incorporated" or "registered" charitable trusts or societies. We have generally used the term "registered".

"Keeping it Legal E Ai Ki Te Ture"

Throughout this section you will find references to a resource called *Keeping it Legal E Ai Ki Te Ture*. This resource is intended to help voluntary organisations comply with their legal obligations and develop strategies for managing risk.

TIP

We advise that you check *Keeping it Legal E Ai Ki Te Ture* (www.keepingitlegal.net.nz) or take other legal advice (such as from a Community Law Centre) before setting up or changing your legal structure.

characteristics of different legal structures



	UNINCORPORATED GROUP	INCORPORATED SOCIETY	REGISTERED CHARITABLE TRUST (SOCIETY-BASED)	REGISTERED CHARITABLE TRUST (TRUST-BASED)	COMPANY	INDUSTRIAL AND PROVIDENT SOCIETY	MĀORI LAND TRUST
Legislation	Nil	Incorporated Societies Act 1908	Charitable Trusts Act 1957	Charitable Trusts Act 1957	Companies Act 1993	Industrial and Provident Societies Act 1908	Te Ture Whenua Māori Act 1993
Minimum number of people required	2 individuals	15 individuals, 5 corporate bodies, or a mix of both	5 individuals or existing society	2 or more trustees	1 or more shareholders	7 individual members	Trustees
Decision-making	By members at general meeting/by committee	By members at general meeting/by committee	By members at general meeting/by board	By trustees/trust board	By directors/shareholders at AGM	By members at general meeting/by committee	By trustees
Liability of members/trustees	Personal liability of members	In general, limited personal liability, provided decision makers act prudently and within the group's purpose and, if charitable, not for personal gain (specific provisions apply to company directors and Māori land trust trustees)					
Reporting requirements	None – unless registered under the Charities Act 2005	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> • changes of rules and office • annual financial statements (unless registered under the Charities Act) 	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> • changes of rules and office 	Registrar of Incorporated Societies requires: <ul style="list-style-type: none"> • changes of rules and office 	Companies Office requires: <ul style="list-style-type: none"> • annual return and changes of name, office, rules and directors 	Registrar of Industrial and Provident Societies requires: <ul style="list-style-type: none"> • annual return 	Registrar of the Māori Land Court requires: <ul style="list-style-type: none"> • annual financial statement and changes of trustees
	All organisations registered under the Charities Act 2005 (also known as "charitable entities") need to file an annual return (including financial statements) with the Charities Commission and notify changes to the name, address, balance date, rules, purposes, or officers of the charity to the Commission.						
Disposal of assets on liquidation	Surplus assets can be distributed among members unless charitable status applies	Surplus assets can be distributed among members unless charitable status applies	Surplus assets must be passed on to other charitable organisations	Surplus assets must be passed on to other charitable organisations	Surplus assets can be distributed among shareholders unless charitable status applies	Surplus assets can be distributed among members unless charitable status applies	As the court directs, or to beneficial owners or successors

CHARACTERISTICS

	UNINCORPORATED GROUP	INCORPORATED SOCIETY	REGISTERED CHARITABLE TRUST (SOCIETY-BASED)	REGISTERED CHARITABLE TRUST (TRUST-BASED)	COMPANY	INDUSTRIAL AND PROVIDENT SOCIETY	MĀORI LAND TRUST
Best suited for	One-off situations, informal groups and clubs	Not-for-profit groups and clubs – particularly membership or volunteer-based groups – especially smaller groups with strong community links	Good for most not-for-profit groups with a charitable purpose	Not-for-profit organisations with a charitable purpose – especially where the initial trustees want to maintain control and succession	Good for groups with a commercial purpose (such as a community business)	Good for co-operatives, generally with a business/commercial purpose (such as craft or workers' co-ops)	Only for Māori land owners or shareholders of corporations
Advantages	No external reporting requirements (unless the group is seeking tax benefits or charitable status) Informal structure, with few rules or restrictions	Democratic, membership-based organisation structure Easy, efficient structure for non-profit organisations (particularly smaller ones)	Provides a better framework for governance/management than incorporated societies (especially in larger, more complex groups) Only requires 5 individuals to incorporate Charitable status and limited liability of members/trust board	Keeps control in a few hands (the trustees), while enjoying limited liability. This provides longer term stability (but may lead to staleness/stagnation)	Easy to set up Useful where the group has some commercial activities (such as a community enterprise) Keeps control in a few hands (the directors), while enjoying limited liability Often easier to obtain loans (but this may require personal guarantees from directors)	Profits can be distributed to members (unless the group has charitable status)	Protection of land from alienation Strong shareholder participation
Limitations/disadvantages	Members may be liable for the debts of the group Not a separate legal entity Not recommended for on-going groups, where groups are employing staff or receiving external funding	Finding (and maintaining) 15 members may be a problem Risk of committees being overturned annually (at AGM) which may lead to short term decision making and limited succession planning (note this can be addressed in the rules) Not suitable for groups with a commercial purpose	Groups need to have a charitable purpose and cannot distribute profits to members The distinctions between the different types of charitable trusts can be confusing	Control is with the trustees – there is no accountability to a wider membership base Trustee succession planning is usually by director appointment The distinctions between the different types of charitable trusts can be confusing	Generally too complex for charitable community organisations Reporting requirements are more complex than other structures Directors may be liable if they fail to meet their obligations	Not suitable for broad membership-based organisations Because they are quite rare, many accounting and legal professionals may not fully understand how they work	Not suitable for commercial enterprises Can be cumbersome to operate due to the wide shareholder participation

unincorporated groups

Many groups start with a person or a small group of people informally providing a service or working on a specific project. Things may eventually grow to a point where there's a need to be structured on a more formal basis. But rather than embarking on a formal organisational structure you can remain as an informal unincorporated group.

However, if your group wants to obtain funding it may need to be incorporated (for example as an incorporated society or charitable trust) or work in close partnership with an umbrella organisation that's incorporated (see below).

some key features

Unincorporated groups are informal in nature compared to more formal incorporated bodies such as incorporated societies and charitable trusts that have separate legal identities.

The rules of an unincorporated group will derive from an agreement between the members or an implied agreement based on past practice, or both. But as an organisation, it will have no particular legal status.

Usually an unincorporated group will have some key features:

- members may be able to come and go at will
- there may be a written or oral contract between the members
- the start date will be the date on which the group was formed.

All members of an unincorporated group should be aware that, although there are fewer rules and reporting requirements, committee members and possibly all members will be personally liable for the organisation's debts and other obligations. See also the chart ("Characteristics of Different Legal Structures") at the start of this section which compares the characteristics of different organisational structures including unincorporated groups.

TIP

rules and processes

Although not required to, as a matter of good practice, an unincorporated group should record its rules and processes for managing the group's affairs and making decisions. Recording those helps the group operate smoothly and is useful if disputes arise.

limitations

Some of the limitations of unincorporated status include:

- membership status is uncertain
- there is no legal requirement to have rules so resolving disputes can be problematic
- members may be personally liable
- unincorporated groups are not separate legal entities so they have no continuing existence that is independent of their members and no legal standing to own property or borrow money.

umbrella groups



Groups can also work successfully within their communities without incorporating themselves by going under the wing of an umbrella group. This is useful where a group does not wish to set itself up as an incorporated body with a separate legal identity. An umbrella group, which must be an incorporated body, allows the group to get on with projects without having to take on the costs and responsibilities of being incorporated.

The umbrella organisation may also receive and pass on any money to a group that is within its structure and may charge a handling or administration fee for its services.

If you use an umbrella organisation:

- you can make use of the skills and resources of the umbrella group
- you have no long-term commitment
- you may save on administration costs
- as a new group you can secure a small amount of funding
- you are working in partnership in the community.

BUT:

- the umbrella group must be a legal entity
- the umbrella group requires full financial information
- your eligibility for grants may be limited
- employment arrangements and responsibilities can be confusing where the group under the umbrella wants to employ someone
- individual liability may not be limited, so individuals in your group may not be protected from being sued
- problems can arise with how assets are dealt with
- you need to have a written agreement with the umbrella group to ensure the relationship is clear. Both parties should seek legal advice before signing any agreement between them.

formal organisational structures



Before you consider whether a more formal organisational structure (including an umbrella organisation) is more suitable for you than an unincorporated one, you should have completed your planning process and be clear about your role in the community, the nature of your project and how you intend to operate. It's better to fit the organisational structure around the group's activities than to fit the group's activities around the organisational structure.

initial considerations

Your choice of formal organisational structure will be influenced by the type of project and the organisation's role played in the community e.g. the organisation may want to act as a facilitator and develop local projects; it may support other groups and projects; or it may undertake trading activities, either for itself or for the community.

Before considering which type of legal form or umbrella organisation is best, you need to be clear about:

- flexibility – how much flexibility do you need as the project or service develops?
- size – whether limits should be imposed on the size of the group
- the desired culture and values of the group
- what activities the group proposes to undertake (different kinds of legal form have different restrictions on their activities)
- control – whether governance, management and ownership should be separated and whether there should be "outside" controls
- funding – how much is needed, from whom and for what?
- accountability – how the group's financial performance will be monitored

- liability – who will be liable if things go wrong?
- responsibilities – management, governance and operational.

advantages

Some advantages of having a formal organisational structure include:

- there's a formal document (deed/constitution) setting out what the group does and how it will do it
- access to a wider range of grants, donations, contracts and loans
- better credibility and accountability
- the possibility to apply for charitable status, and so benefit from exemptions from income tax, resident withholding tax and gift duty
- prevention of people being personally liable for the group's debts.

benefits of incorporation

It's important to mention the benefits of incorporation which apply to some of the formal organisational structures that will be discussed below.

SEPARATE LEGAL IDENTITY

A society may incorporate under the Incorporated Societies Act 1908 or a charitable society or trust may incorporate under the Charitable Trusts Act 1957. When they do so, they become a separate legal entity which has a number of consequences and benefits.

As a separate legal entity, an incorporated group can:

- execute documents in its own name
- enter into contracts in its own name, subject to its own rules
- buy, sell, own, lease and rent property, subject to its own rules
- borrow money and give securities, subject to its own rules
- sue and be sued in its own name.

PERPETUAL SUCCESSION

An incorporated group has “perpetual succession” which means its existence is not limited to that of any of its members and the group continues to exist as long as it complies with the law and is not wound up. This permanence gives additional reputability to the group when entering into contracts or seeking grants or donations.

LIMITED LIABILITY

The members of an incorporated group benefit from gaining “limited liability”. This means that when the group incurs any debts or other legal liabilities, it can usually only be sued in its own name, and its members are not usually personally responsible.

However, members may be held personally liable where, for instance, they do not make it clear to third parties whom they are dealing with, that any liability the member incurs is for the group.

Refer to the Companies Office website (www.societies.govt.nz) for the various relevant application forms for incorporation.

TIP

choosing the right structure

So once you have a clear purpose and vision for your organisation and you’ve decided you want to set up your own formal organisational structure, it’s important that your organisation chooses the structure that best fits your needs. There are a number of options available to you and it is recommended you seek legal advice before deciding on the best one. The two most common incorporated structures are incorporated societies and charitable trusts. These are dealt with in greater detail next, followed briefly by some other structures. For a quick overview of the different options, you can refer to the chart (“Characteristics of Different Legal Structures”) at the start of this section.

While this kit provides some general information about different organisational structures, you should refer to *Keeping it Legal E Ai Ki Te Ture* (www.keepingitlegal.net.nz) for more technical or legal information.

TIP

incorporated societies

The Companies Office – which is part of the Ministry of Economic Development – is the place to go to register as an incorporated society. For more information about setting up and running an incorporated society, refer either to:

- Companies Office website (www.societies.govt.nz)
- CommunityNet Aotearoa's "How to" guides and templates at (www.community.net.nz)
- *Keeping it Legal E Ai Ki Te Ture* (www.keepingitlegal.net.nz).

A flowchart showing the process for setting up an incorporated society is also given at the end of this part on incorporated societies.

some key features

An incorporated society:

- is set up under the Incorporated Societies Act 1908
- has a set of rules that governs the way the organisation operates
- has a minimum of 15 individuals or 5 corporate bodies e.g. other societies, charitable trusts or companies (with each corporate body counting as 3 individuals) or a mix of both
- can make profits and employ people, but may not distribute profits to members
- has its income taxed although it may be eligible for a range of tax exemptions.

rules

The rules (or constitution) of an organisation is its most important document, as it sets out the vision or purpose for which the organisation is being set up. It is the place to embed your kaupapa, or your guiding principles and values.

Section 6 of the Incorporated Societies Act 1908 sets out the minimum requirements that must be included in an incorporated society's rules. These are:

- name
- objects (or purposes)
- how people become members
- how membership is terminated
- how rules are to be altered, added to, or rescinded
- how to give notice of, and run, general meetings as well as voting methods
- appointment of officers
- the control and use of the common seal
- the control and investment of funds
- the powers (if any) of the society to borrow money
- the disposition of property in the event of the society being put into liquidation.

More detail is given on each of these minimum requirements next. As long as these minimum requirements are included, the group is free to include additional rules if it wishes.

TIP

MINIMUM REQUIREMENTS

Name

There are some restrictions on the name that you can use. The society's name must end with the word "Incorporated" and it can't be the same name as any other society, company or organisation.

If you think you may want to register with the Charities Commission, you need to have a name that the Commission believes is not offensive or liable to mislead the public.

TIP

Objects

The objects (or purposes) can cover any legal activities. They should include its main activities, activities the society would like to do in the future, and a general statement allowing it to do anything else to further its aims. It is important that your objects reflect your mission, but are flexible enough to adapt to changes in the future. Note that any changes to your objects need to be approved by two-thirds majority of the members at a general meeting, and any change in the future may affect your charitable status (if this applies).

Membership

The rules must set out who can be a member. There can be different types of members e.g. full members who are actively involved and associate members who are less involved. Different types of members can have different voting rights. The rules should state how many people can become members and how they become members e.g. apply in writing. The rules should also cover how people stop being members (e.g. in writing) and the procedure for removing members. You may wish to include a rule to allow you to charge membership fees. A list or register of members must be kept.

Meetings

In addition to the mandatory rules about general meetings, you may also have rules relating to annual general meetings (AGMs or hui-ā-tau) and special general meetings (SGMs) that also involve all the members.

General meetings

These provide a way for the membership as a whole to keep in touch. There is no set number of meetings that must be held but the rules may state the minimum to be held. In a small society these are likely to be held regularly e.g. every month. In a larger society, where a committee does most of the work, these meetings may be held less often.

Annual general meetings (AGMs)

These are held once a year. You may want to state in your rules that it must be held within 14 or 16 months of the previous AGM. The AGM will elect the office holders and any committee, consider the financial statements, review the year's activities and plan for the year ahead.

Special general meetings (SGMs)

These may be called outside the normal general meeting times to discuss urgent business or to consider an important issue such as an amendment to the rules. The rules should set out how members can request a SGM (e.g. by giving written notice to the secretary), and whose job it is to organise it (e.g. secretary).

Notice of meetings

Your rules should set out how notices of meetings are to be given to members. In the case of an SGM, the reason for calling the meeting should be included in the notice. Your rules must also state when the notice is to be received e.g. 14 days before the meeting.

Quorum

A quorum is a minimum number of members required to attend before a meeting can begin or continue. If the quorum is not reached, the meeting cannot be held. The number of the quorum will depend on the size and circumstances of your group. It should not be set too high or you may have difficulty holding a meeting. Nor should it be set too low, or a small group could hijack the organisation.

Running meetings

Your rules must state who will run the meetings. Any additional details of how you want to organise your meetings can be added.

Decision-making

Decisions can be made either by consensus or by voting. The rules must set out the voting procedure. They should cover whether all or only certain types of members can vote. You will need to state how a vote is to be held, e.g. by voices, by show of hands, or in writing. You will also need to state how a decision is passed and how many members need to be present. You will have to decide if you want all votes to be exercised in person at the meeting, or whether you will allow postal votes or proxy voting (where someone can vote on behalf of another member). A proxy vote should be in writing and signed by the member who cannot attend.

Committees

You do not have to have a committee. Your group can be run by general meetings – although

if it has more than twenty people, you will find a committee an advantage. You can also establish sub-committees to attend to particular projects or tasks. The committee will be appointed or elected at the AGM. Your rules should set out:

- the number of committee members (there is no maximum or minimum number required)
- who is to convene the committee e.g. the chairperson of the society or rotated amongst members
- how often the committee is to meet during the year
- how decisions are made and voted on at committee meetings
- whether the committee can co-opt extra members
- whether the committee can form sub-committees.

Your group should decide how wide the committee's powers should be e.g. the power to borrow money to be exercised only at a general meeting of the whole society, or the power to co-opt non-members to the committee to form subcommittees. It is important to allow the committee to be able to function without the need to call constant meetings.

Officers of the Society

Groups do not have to appoint particular officers. Some groups operate as a collective, sharing tasks and responsibilities, sometimes on a rotating basis amongst the members. It is also possible to draw on external assistance to undertake some of the tasks. Where officers are appointed, there are usually three – the chairperson, the secretary and the treasurer.

If you want to apply to register under the Charities Act 2005, officers (all trustees, and all members of a board or governing body) will need to meet the qualification requirements of the Charities Act 2005.

TIP

Chairperson

The chairperson convenes meetings of the society and any committee it may elect,

and ensures that the rules of the society are followed. The chairperson may also take on a leadership role in the activities and management of the group. The chairperson's role can be as wide or narrow as you require.

Secretary

The key roles of the secretary are: to keep a register of members; to prepare notices for general meetings; to keep minutes of all meetings; to keep the official stamp or common seal of the society in safe keeping, and to handle incoming and outgoing correspondence.

Treasurer

The role of the treasurer – alone or in association with an outside accountant or in-house financial administrator – is: to keep proper financial records; to bank all money received by the society; to pay all accounts; to prepare annual accounts, to file the annual accounts with the Registrar of Incorporated Societies, and to look after any taxation requirements e.g. PAYE and GST.

For further details on the role of the chairperson, secretary and treasurer refer to *Section 4 – Governance*.

TIP

Other Officers

Other officers of the society may include: a patron or patrons, a fundraising co-ordinator, a publicity co-ordinator, and an education co-ordinator.

The Common Seal

All societies must adopt a common seal on incorporation. The rules of the society will set out when the common seal should be used and how. Generally it is used on legal documents and contracts that the society enters into.

A common seal is usually a rubber stamp that includes the name of the society and the words "common seal". Contact a commercial stationer for information about ordering a seal.

Finances

Your rules must set out: that proper accounts are to be kept; who will control your funds e.g. sign cheques and withdrawals (this will usually be your treasurer and one of two people appointed by the

committee); that all funds are to be banked into the society's bank account; and that any surplus funds are to be placed in secure investments.

Financial statements must be prepared and presented to the AGM each year. The financial statements must include: your income and expenditure; your assets and liabilities; and any mortgages, charges or securities over any of your property.

A copy of the financial statements must be sent to the Registrar of Incorporated Societies. An officer or solicitor of the society must certify that the financial statements have been approved by the members of the society at a general meeting.

The financial statements do not need to be audited unless required by the rules of the society – though certain funding bodies may also require this. Don't make this a requirement in your rules – you can still appoint an auditor even if this isn't required in the rules.

Powers

The rules should include powers to borrow money and invest it; to employ staff; to lease or buy property; to sell property and to sign contracts. The powers may be as wide or narrow as the group requires.

Surplus assets

Your rules must state what is to happen to any assets after you have paid all your debts. You may want to distribute any surplus assets to another society or trust with similar aims to your own.

- Include your kaupapa, your mission, guiding principles and values in your constitution. This isn't required by law, but it provides a public statement about your organisation and what you stand for.
- It is useful to have a general clause stating how any dispute between members or between members and the committee may be resolved e.g. by mediation. Don't be too prescriptive in the constitution – your policies and procedures will set out the detail.
- Charitable status – depending on the reason for your group, you may want to register as a charity with the Charities Commission and obtain the tax and other benefits of registration. The main things to consider are:
 - the purposes need to be charitable (see below)
 - no member can obtain any personal financial gain (pecuniary profit) from being a member of the group (although a member can be paid for work done as long as it is no more than a reasonable "open market" value)
 - on winding up, any surplus must be distributed to other charitable organisations.

TIP

For further details or guidance on developing your rules, refer to:

- *Keeping it Legal E Ai Ki Te Ture* – www.keepingitlegal.net.nz
- CommunityNet Aotearoa "How to" guides and templates – www.community.net.nz.

TIP

If the society is registered with the Charities Commission, any surplus assets will need to be distributed for charitable purposes.

final tips on rules

- Look at the sample set of rules or the rules of other incorporated societies available on the Companies Office website – www.societies.govt.nz – to get some ideas.

process for setting up an incorporated society

The following flowchart shows the process for setting up an incorporated society.

1. Your group wants to set up an incorporated society.



2. Meet and:

- a. decide on a name of the group
- b. decide the overall mission, purpose and values of the organisation (this starts to develop your rules or constitution).

Refer to Section 1 – Getting Started and Section 2 – Planning for more information on developing your mission and strategic planning.



3. Go to Companies Office website (www.societies.govt.nz) and:

- a. check the name is available
- b. review rules of other incorporated societies and the sample set of rules
- c. download application form or ring 0508 762 438 for forms to be posted out.



4. Draft a set of rules (this is usually done by a small group, with the draft taken to the larger group – see 5 below).



5. Call a meeting of at least 15 people (or equivalent corporate bodies) willing to be the founding members. At this meeting your group needs to:

- a. approve the rules
- b. complete the application for incorporation documents
- c. appoint a chairperson, secretary, treasurer and management committee
- d. set a membership fee (or agree not to have one).



6. Send the following completed documents back to the Companies Office:

- a. the application for incorporation document
- b. a copy of your rules
- c. the certification form for the rules
- d. \$100 lodgement fee.





7. The Companies Office informs your group that it is now an incorporated society and sends you a certificate.



8. To maintain your registration you will need to file the following documents with the Registrar of Incorporated Societies:

- a. annual financial statement
- b. rule changes (including name changes)
- c. address changes.

If you are registered with the Charities Commission, you will need to notify changes and file an annual return (including annual accounts) with the Charities Commission instead of the Registrar of Incorporated Societies.

TIP

If you want to apply for registration under the Charities Act 2005, you need to make sure that you meet their requirements for registration.

These cover three items:

- a. the name needs to be suitable i.e. not offensive or liable to mislead the public
- b. the purposes need to be charitable and
- c. the officers need to be qualified under the terms of the Charities Act 2005.

Refer to www.charities.govt.nz for more details.

charitable trusts



different types

A charitable trust is the other main legal structure that community groups may consider.

There are several different types of charitable trust:

- **Unincorporated charitable trust** – this may be used where someone sets up a trust to provide funds for a particular cause. They have the limitation of any unincorporated group and are not recommended for an ongoing community group.
- **Registered charitable trust (trust-based)** – in this model, two or more trustees can set up a trust for a charitable purpose. This is useful where the initial trustees want to retain control of the organisation, including appointing further trustees.
- **Registered charitable trust (society-based)** – in this model, an established society, or a minimum of five people, can register a society as a charitable trust board under the Charitable Trusts Act 1957 as long as it meets the requirements of being charitable.

Registering a trust or society as a charitable trust board under the Charitable Trusts Act 1957 is commenced by applying to the Registrar of Incorporated Societies at the Companies Office (see the flowchart on setting up a registered charitable trust at the end of this part on charitable trusts).

charitable purposes

Trusts or societies registered as charitable trust boards must act exclusively or principally for charitable purposes which are:

- a. the advancement of education
- b. the advancement of religion
- c. the relief of poverty, sickness or disability
- d. any other purpose that benefits the community.

A charitable organisation with a purpose falling under (d) must also be able to demonstrate “public benefit”. This means the organisation must show that its purposes can produce a benefit that is recognised by law as beneficial, and that this benefit is available to the public or a sufficient section of the public.

key features

A charitable trust board:

- is set up under the Charitable Trusts Act 1957
- has a board of at least two trustees (if it's a trust) or five members (if it's a society) to make decisions
- must have charitable aims – not be for private profit
- will have a trust deed (if it's a trust) or set of rules or constitution (if it's a society) under which it operates. A copy of these must be lodged with the Registrar of Incorporated Societies at the time of applying for registration
- once registered and incorporated, has a separate legal identity distinct from its members or trustees
- must be registered by 1 July 2008 with the Charities Commission to keep or obtain charitable tax exempt status.

rules

As with incorporated societies, the rules (or trust deed or constitution) is a charitable trust's most important document as it sets out the organisation's purpose and sets the rules under which it must operate. The trust deed sets out the rules of a trust-based charitable trust and the constitution sets out the rules of a society-based charitable trust.



Rules checklist

Unlike the Incorporated Societies Act 1908, the Charitable Trusts Act 1957 does not state what needs to be included in the rules. However, under good practice, the trust deed or constitution needs to include the following items so that the trust or board operates smoothly:

- The purposes of the trust. These need to be charitable, and should refer to the mission of the organisation.
- The area of operation. In general Inland Revenue requires that your activities need to be restricted to New Zealand in order to obtain donee status for tax purposes (i.e. so that people making a donation can claim a tax deduction).
- The make-up of the board, including the number of trustees/board members, how they are appointed and how long they serve and how they can be removed.
- Whether trustees or members can be paid for their services – this is the “pecuniary benefit” clause. You should specify that, if trustees or members are paid for their services, this may be no more than the “market rate” for the work done.
- Board and, if applicable, general members' meetings.
- Decision-making, quorum numbers and notice of meetings. You need to be careful that you do not set the quorum at too high a level – if there are a couple of vacancies on the trust/board, you may have difficulty obtaining a quorum.
- Board's finances. As with incorporated societies, the accounts do not need to be audited unless the rules state this.
- Powers of the board. In the case of a society these are likely to be the same as those for an incorporated society. In the case of a charitable trust, the trustees are given authority to carry out the aims, which can be very wide or quite narrow depending on what suits the group.
- Permission to alter the trust deed or rules.

Refer to *Keeping it Legal E Ai Ki Te Ture* (www.keepingitlegal.net.nz) or the Companies Office website (www.societies.govt.nz) for more information on the legal details of establishing, incorporating and operating a charitable trust, and the distinction between the different types of charitable trust.

process for setting up a registered charitable trust

The following flowchart shows the process for setting up a registered charitable trust.

1. Your group wants to set up a registered charitable trust.



2. Meet and:

- a. decide whether it will be "society" or "trust" based
- b. decide on the name for the trust
- c. decide who will be the trustees/board members and how the trust or society will operate
- d. draft a trust deed or constitution that includes your aims, powers and rules of the trust or board.



3. Go to Companies Office website (www.societies.govt.nz) and:

- a. check the name is available
- b. review rules of other charitable trusts
- c. download application form or ring 0508 762 438 for forms to be posted out.



4. Call a meeting of the trust board. At this meeting your board or trustees need to:

- a. approve the trust deed (trust-based) or rules (society-based)
- b. approve the application for incorporation documents
- c. complete the declaration form
- d. complete the registered office form
- e. elect a secretary, treasurer and management committee (for a society).



5. Send the completed documents back to the Companies Office.



6. The Companies Office informs your group that it is now a registered charitable trust and sends you a certificate.





7. To maintain your registration you will need to file the following documents with the Registrar of Incorporated Societies:

- a. rule changes (including name changes)
- b. address changes.

If you are registered with the Charities Commission, you will need to notify changes and file an annual return (including annual accounts) with the Charities Commission.

TIP

If you want to apply for registration under the Charities Act 2005, you need to make sure that you meet their requirements for registration.

These cover three items:

- a. the name needs to be suitable i.e. not offensive or liable to mislead the public
- b. the purposes need to be charitable and
- c. the officers need to be qualified under the terms of the Charities Act 2005.

Refer to www.charities.govt.nz for more details.

other organisational structures



Discussed briefly below are a number of less common organisational structures that still may be applicable for community groups. Aspects of some of these (companies, industrial and provident societies and Māori land trusts) are also summarised in the chart ("Characteristics of Different Legal Structures") at the start of this section and are dealt with in *Keeping it Legal E Ai Ki Te Ture* (www.keepingitlegal.net.nz).

companies

Most community organisations will be either charitable trusts or incorporated societies. However, for some organisations, registering as a company may provide a better structure under which to operate. Companies are best suited to organisations that have a commercial aspect to them, such as a community-owned business. Companies can register as charitable entities with the Charities Commission – provided they meet the required conditions (see www.charities.govt.nz).

Some common characteristics of companies are:

- they could have directors appointed by individual members and/or other community group
- shareholders are not personally liable beyond the value of their shareholding unless they give personal guarantees
- directors have limited liability
- to be charitable, they will have charitable or other community purposes stated in the constitution along with other special provisions restricting personal benefit to those involved.

co-operative companies

This is another option available, however, it's a specialist form of structure that is more appropriate for commercial entities, such as producer co-operatives.

industrial and provident societies

Relatively few Industrial and Provident Societies (IPS) are registered now. They were more common in the 1970s when co-operative businesses were more popular. Taxi co-operatives are examples of this legal structure, which may be worth considering in some situations, such as when setting up a work, or arts marketing co-operative.

If you intend registering as a company or IPS, you should seek legal advice first. For more information on companies and other organisational structures refer to www.companies.govt.nz.

TIP

five types of Māori land trusts

There are five different types of trusts described in Te Ture Whenua Māori Act 1993/Māori Land Act 1993 – Pūtea trusts, Whānau trusts, Ahu whenua trusts, Whenua tōpū trusts and Kai tiaki trusts. Of these, Whānau and Pūtea trusts are the most common.

Māori land trusts can only be set up by the owners of Māori land or their trustees. They are set up under a trust deed and registered with the Māori Land Court, with the primary goal of retaining Māori land in Māori ownership.

PŪTEA TRUSTS

These are designed to deal with uneconomical smaller share interests within a block or within various blocks. Te Ture Whenua Māori Act 1993 requires that the shares, and any income they produce, be held for Māori community purposes.

WHĀNAU TRUSTS

These are designed to hold and manage beneficial interests or shares in Māori land or general land owned by Māori. They enable whānau members to bring together all of their interests or shares in land, for the benefit or advancement of the whānau and the descendants of the tipuna (living or deceased) named in the trust order.

AHU WHENUA TRUSTS

These are land administration trusts designed to manage whole blocks of land administered by the Māori Trustee. They are often used for commercial operations and are the choice for many farming operations over Māori freehold land.

WHENUA TŌPŪ TRUSTS

These are designed to manage land belonging to an iwi or hapū, share many of the features of Ahu whenua trusts and are subject to the same restrictions.

KAI TIAKI TRUSTS

These are designed to protect minors or persons under disability who are unable to manage their affairs. They can be constituted over the person's land interests and personal property.

TIP

More detailed information on these trusts is available from Māori Land Court Offices or from the Ministry of Justice website – www.justice.govt.nz/maorilandcourt. See also Te Puni Kōkiri's website – www.tpk.govt.nz (under *Effective Governance*) – for information on these trusts and other structures used by Māori organisations.

charities commission

functions

The Charities Commission (from now on referred to as the Commission) was established on 1 July 2005 by the Charities Act 2005 (from now on referred to as the Charities Act). The Commission and the Charities Act are monitored by the Department of Internal Affairs.

The Commission has two main functions:

- to register and monitor charities
- to provide education and support to the charitable sector.

registration

The Commission will consider applications for registration from any organisation that meets its criteria. The organisation does **not** have to be incorporated. The main criteria are:

- the name needs to be suitable i.e. not offensive or liable to mislead the public
- the purposes need to be charitable
- the officers need to be qualified under the terms of the Charities Act.

NAME

For an organisation that is already incorporated (e.g. as an incorporated society or registered charitable trust), the name of the organisation is the same under which it was incorporated. Otherwise the Commission decides if the name is offensive or liable to mislead the public.

CHARITABLE PURPOSES

Key criteria for charitable status are:

- income derived by the organisation is for charitable purposes i.e. the relief of poverty, the advancement of education, the advancement of religion or any other matters that are beneficial to the community
- the organisation is established and maintained for charitable purposes and not for the private pecuniary gain of any individual.

QUALIFICATION OF OFFICERS

Your officers (all trustees and all members of a board or governing body) will need to meet the qualification requirements of the Charities Act. The disqualifying factors are set out in section 16 of the Charities Act and include being an undischarged bankrupt, being under 16 years of age, having a conviction for dishonesty within the last 7 years, as well as other criteria.

TIP

- The Charities Commission website will host the Charities Register which opens to receive applications for registration on 1 February 2007. The Commission is providing information on what charities need to do to register as well as online assistance with registration via that same website. Check it out!
- It's free to register but there will be ongoing costs for filing your annual returns if your charity has a gross income of \$10,000 or more. The fees are \$50 for an online return and \$75 for a paper return.

TAX EXEMPTIONS

Although registration with the Commission is voluntary, charitable organisations will have to register by 1 July 2008 if they want to obtain or keep their charitable tax exempt status.

Registration is a pre-requisite for charities wishing to claim the tax exemptions. There are some further requirements in the tax legislation that mean that following registration, charities will need to consider whether they meet the requirements for the tax exemptions under tax legislation.

In most cases, charities with non-business income only (e.g. investment income such as interest and dividends) that are registered under the Charities Act will qualify for the exemptions. Where a registered charity has business income, it will need to consider some further criteria.

Upon registration with the Commission, charities will receive a letter from the Commission, notifying

them that their application has been successful, and information from Inland Revenue to assist them in determining their tax position.

The Commission will advise Inland Revenue of your charity's registration so there is no need for you to do that. Also, there is no need for registered charities to make a separate application to Inland Revenue for donee status. Donee status means that individuals can claim a rebate, and companies and Māori authorities can claim a deduction for charitable donations they make to your organisation. Where your organisation is one that receives donations from the public, Inland Revenue will use information provided on your application to register as a charity to determine whether or not your organisation qualifies for donee status, and will send you a letter confirming this.

TIP

- For more information on the various tax exemptions available to different types of charitable organisations, refer to Inland Revenue's website – www.ird.govt.nz or obtain a copy of their publication *Charitable organisations: a tax guide for charities, donee organisations and other groups* (IR 255).
- For further general information on the Charities Commission and the registration process, refer to:
 - Charities Commission website – www.charities.govt.nz
 - *A Guide to the Charities Act* 7-page booklet available electronically from the Charities Commission website or in hard copy from the Commission by calling free phone 0508 242 748
 - *Keeping it Legal E Ai Ki Te Ture* – www.keepingitlegal.net.nz.

dissolution and winding up



Dissolution of an organisation is the act of ending its “life” as a legal entity. It could be that the purpose for which the organisation was set up has been achieved – in which case it’s part of the natural life cycle of the organisation. On the other hand, dissolution may be necessary because the organisation is unable to continue to operate because, for example, it’s in financial difficulty.

Liquidation (or winding up) is the process that brings an organisation’s activities to an end. Liquidation begins when a liquidator is appointed. It involves “realising” the organisation’s assets, paying its liabilities and distributing any surplus in accordance with its rules. This process of liquidation differs depending on whether the incorporated organisation is a company, incorporated society or charitable trust board.

incorporated societies

Many incorporated societies will reach a point when they can no longer operate as a society e.g. membership numbers have dropped or it’s in financial difficulty.

An incorporated society can be put into liquidation in one of three ways:

1. Voluntarily by the members resolving at a general meeting (by simple majority) to do so and to appoint a liquidator. A second general meeting confirming this previous resolution must also be held.
2. By the Registrar of Incorporated Societies issuing a notice dissolving the society if he or she believes that the society is no longer operating e.g. if the society fails to send in a copy of its annual financial statements.
3. By the High Court (on receipt of an application to do so from the society itself, a member, a creditor of the society, or the Registrar of Incorporated Societies).

The effect of the dissolution by the Registrar (option 2 above) and the end of the liquidation, is to remove the society from the register and end its life as a separate legal entity.

Once a society is in liquidation, the activities of the society are stopped, debts are paid, and any assets are distributed in accordance with the rules. The proceeds from the society’s assets are collected and distributed to its members (unless the rules provide otherwise). If the incorporated society has charitable status, any surplus assets must be directed to other charitable organisations within New Zealand that have similar aims.

charitable trust boards

A charitable trust board may be put into liquidation in one of two ways:

1. Voluntarily by the trustees or members who may pass a resolution to that effect at a general meeting and confirmed at a second general meeting held specifically to consider winding-up.
2. By the High Court (on receipt of an application to do so from the board itself, a board member, the Attorney-General, a creditor of the board, the Registrar of Incorporated Societies, or any other person whom the Court permits).

The Companies Act 1993 (Parts 16 and 17) applies to a liquidation of the trust board as if the board was a company. If there is any surplus after paying debts, this must be distributed to another charitable organisation in New Zealand. On liquidation, the trustees or officers of charitable trust boards may be personally liable in certain situations (e.g. if proper accounting records have not been kept).

companies

A company may be put into liquidation in one of two ways:

1. Voluntarily (by the voting shareholders or the company's board).
2. By the High Court (on receipt of an application to do so from the company, a director, a shareholder or other entitled person, a creditor of the company, or the Registrar of Companies).

Liquidation of a company is when it ceases to operate or becomes bankrupt. The company's assets are sold and the proceeds are paid to the company's creditors with any surplus money distributed proportionately among the shareholders. If the company has charitable status, any surplus assets must be directed to other charitable organisations within New Zealand that have similar aims.

The final effect of liquidation is that the company is removed from the New Zealand Companies Register.

TIP

For further information on liquidation, refer to:

- *Keeping it Legal E Ai Ki Te Ture* – www.keepingitlegal.net.nz
- the Companies Office website – www.companies.govt.nz.

where to go for more information



publications

Title:

Keeping it Legal E Ai Ki Te Ture

Details:

A Kit intended to help voluntary organisations comply with their legal obligations and develop strategies for managing risk.

Publisher:

New Zealand Federation of Voluntary Welfare Organisations (NZFVWO) and Office for the Community and Voluntary Sector (OCVS)

Publication date:

Revised edition, July 2005

Format/Availability:

Hardcopy and available online at www.keepingitlegal.net.nz.

Title:

A Guide to the Charities Act

Publisher:

Charities Commission

Publication date:

February 2006

Pages:

7

Format/Availability:

Booklet and available online at www.charities.govt.nz.

Title:

Charitable organisations: a tax guide for charities, donee organisations and other groups (IR 255)

Publisher:

Inland Revenue

Publication date:

December 2002

Pages:

55

Form/Availability:

Booklet and available online at www.ird.govt.nz

online resources

1. Companies Office websites (www.societies.govt.nz and www.companies.govt.nz) for general information on various organisational structures.
2. Relevant legislation e.g. Companies Act 1993, Incorporated Societies Act 1908, Charitable Trusts Act 1957 (www.legislation.govt.nz).
3. Ministry of Justice website (www.justice.govt.nz/maorilandcourt) and Te Puni Kōkiri's website (www.tpk.govt.nz) for information on Māori land trusts and other structures used by Māori organisations.
4. Charities Commission website (www.charities.govt.nz).
5. CommunityNet Aotearoa website (www.community.net.nz) for *How-to Guides – Getting Started: Legal Structures*.
6. Inland Revenue website (www.ird.govt.nz) on tax exemptions relating to charitable organisations.
7. *Keeping it Legal E Ai Ki Te Ture* website (www.keepingitlegal.net.nz).