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Lawyers 

Charities Healthcheck

(and the questions you should ask)

A collaborative guide

Part 2/6

Governance

edited by Steven Moe

To go fast, go alone. To go far, go together.

Thanks to every contributor of ideas listed here (alphabetically) - a truly collaborative effort to get input of so many ideas from so many, and I hope the start of many examples of coming together! Join us by sending your thoughts for future editions so it can always be improved and refined.

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Cover Image: Braided River Reflection

Braided rivers in Aotearoa New Zealand are unique because they change often, moving along in the same general direction, but never ever staying exactly the same.

Trying to plan every aspect of your life means you'll miss out if you try to stay in one stream. A lot will come down simply to this: persistence, serendipity and the relationships you cultivate.

Then the magic ingredient to really see new opportunities, is that you have to be willing to also let directions shift, like a braided river, and go where the water of new opportunities are flowing.



Image: The afternoon sun reflecting off the braided Rakaia River flowing out of Lake Coleridge, captured on a flight south to Queenstown.

Edited by Steven Moe

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Additional thoughts? Send them to
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Introduction:

Kia ora and welcome to this collaborative guide.

So what is a “collaborative guide”? I really just made that name up to represent that this only exists because so many have contributed to it.

I went out to ask for input on an initial draft of ideas and was overwhelmed by the response of so many who felt the same - that we want to ask the right questions to support charities and “for purpose” organisations to stay safe. Thanks to you all!

I’ve helped many hundreds of these groups and they consistently face the same issues. Those are refined down in this guide through a series of themes and then questions so that you can learn quickly what often only gets found out by trial and error.

Why not choose a theme and then ask just those questions at your next board meeting and consider the answers together? Even if you have run a charity for a long time, they will be good reflection points - we can all be constantly learning.

This Charities Healthcheck sets out the key legal risks that charities should know about, and could work to improve, to mitigate risks to Board members and the organisation.

This is not a textbook. It is not long. It is deliberately high level. It’s a guide - like when you are in another country and someone takes you on a tour of a local place, and you get more insight than if you walked around it on your own.

Hopefully this is also a project that evolves over time - and it will be updated each year based on feedback received.

The plan is to revise and reissue this next year, so we welcome comments ahead of 1 September 2024. So, if there are ideas you have to contribute, send them over to me and we can consider adding them - maybe different questions or expanded ones, other resources, different topic ideas.

Originally I called this 15 Key Issues Charities Face but now have split that into these parts of the guide so that you can focus on things by these themes:

- **Part 1: Overview**
- **Part 2: Governance**
- **Part 3: People**
- **Part 4: Assets**
- **Part 5: Policies**
- **Part 6: Faith Groups**

My role is to be a catalyst to solve your legal problems. With a team of lawyers focused on “for purpose” organisations and 80 staff across four offices, we are New Zealand’s leading law firm for charities, churches, companies and entrepreneurs who want to do things differently - with purpose and impact at your core.

This guide is just one example of supporting this area, so check out some others as well - these range from [Seeds Podcast](#) (350+ conversations), picture book [The Apple Tree](#), [the Reimagining Business book](#), the upcoming [Seeds Impact Conference](#) in October (just \$20 for a day with 27 change-making sessions) and guides like the [Charities in New Zealand: A Legal Handbook](#).



Together, let's make things better.

Ngā mihi,
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The Seeds Impact Conference will be held on 5 October 2023, with 27 sessions held over four zoom rooms and only \$20 to attend - more info and you can sign up here:

<https://seedsconference.nz/>



What is governance?

Before we get into the detailed questions on the following pages it is important to set the scene by explaining what governance is, and what it is not.

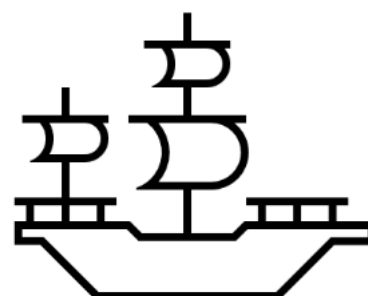
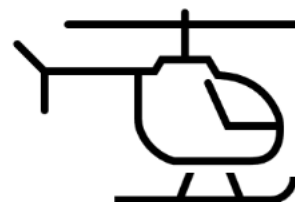
In charities and for-purpose organisations there is often a need for people to “do everything” so there can be a blurring of the lines between governance and management. Let’s consider what those two concepts are:

- **Management** is about the operation of the entity - think of it like a ship, plugging leaks, fixing the engine, repairing the sails, sending someone to clean the deck, and actually steering the ship moment by moment.
- **Governance** is a small group of people in a helicopter, flying high above the ship. They are focussing on the future, strategy, the risks that are coming which no one on the ship can see - “watch out for that iceberg!”

Governance is vital for a healthy organisation because it is future-focussed. While those in governance will consider the past, their remit is one that is facing forward and asking what is coming.

A Board will set direction, provide oversight, select management and evaluate them, represent the organisation externally, develop resources and manage risk.

A group which descends from the heights of governance to focus on management will be doing their group a disservice. While it gets blurred in volunteer-led organisations, it is important to be clear on this distinction, before we turn to some detailed questions to consider.



Part II: Charities

Healthcheck: Governance

1. Your founding document

Why is this important?

This document sets the foundation on which your organisation is built - it is important it is clear, sets the rules, and is compliant with what is legally required.

Questions to provoke discussion	Your notes	Ranking (of 10)
When did you last review this document? Is it currently compliant with the law, including new laws e.g. The Trusts Act 2019?		
Does your purpose clearly state why you exist, the problem you seek to solve, and for whose benefit - and how is this expressed in the founding document and your strategy?		
What would be the conditions for your organisation to close - with mission completed?		
Key Resource: Charting the Future paper		
How does the founding document remain relevant to your purpose (and vice versa)?		
Do you follow the processes set out in the document? For example, holding an AGM, election of Board members, amending founding document and advising Charities Services.		
Is your governance aligned with the Trust Deed purpose?		
Have you considered reconnecting with your purposes, and in so doing revitalising your strategy?		
Do you have a clear record of appointment for your current Board members that matches the processes required in your founding document?		
Is your legal structure currently fit for purpose e.g. trust, incorporated society, company, partnership etc? Note that the new Incorporated Societies Act provides an opportunity to reconsider whether that entity model is still appropriate for your group. See article in guide here.		

1. Your founding document - cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
Are you keeping track of each Board member's length of term?		
Do you have a clear succession process for governing body members?		
Do the organisation's leaders have a shared understanding of the strategic risks and opportunities facing the charitable sector? How is your Board shaping/integrating these into management decision-making?		

2. Governance

Why is this important?

Governance provides focus for the future so it is important to get it right!

Questions to provoke discussion	Your notes	Ranking (of 10)
What do your leaders understand their role in governance to be?		
Is it clear what role different groups play? Consider trustees, kaumātua, management, advisors, volunteers and donors.		
How does the Board assess its own performance and reflect both individually and collectively on performance?		

Key resource: [Governance Masterclass: 7 scenarios](#)

Are all those in governance aware of their role and requirements on officers, and understand the purpose of the organisation?		
Do leaders understand the requirements of the Charities Act?		
How do you recruit Board members? Do you advertise widely, have an application process, interview potential candidates? Do you actively recruit for diversity?		

2. Governance - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do you have a Board Charter with defined expectations for the Board members and executive officer? The IOD has a free template here and committee sample charters are here .		
Do you have an induction pack or learning resources for new members of the Board? For example, give them copies of policies, previous minutes, Board Charter, outline of history, purposes, future direction, role they can play. Is it clear what is expected of them?		
Does the Chair lead the induction? Is there more than just a reading programme for new Board members? Face-to-face induction is desirable.		
Have you clearly defined what “success” is in light of your purpose? This could be done by reference to the desired outcomes that are used in the Statement of Service Performance Report.		
Have you made the distinction clear between the role of governance and management? And is this clearly modelled and communicated by Board members and other leaders in the organisation?		
How do management know what is expected of them?		
How does the Board reflect its commitment to Te Tiriti o Waitangi or to tangata whenua e.g. co-governance, Māori members on the Board.		
How does the Board involve committees that: 1. Ensure ultimate decision-making remains with the Board; and 2. Do not duplicate, substitute, re-litigate or undermine management?		
Do you have sub-committees set-up to handle key aspects of the Board’s role? Are the people with the right skill set on the right sub-committee? How often do you review these sub-committees?		

2. Governance - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
Are those in governance able to separate their roles from management functions - or are they just expected to roll up sleeves and do the mahi within the organisation? If the latter, is it then difficult for them to act on strategic information which is vital for their effectiveness and efficiency?		
How will you manage conflicts of interest on the Board such as frequently updating the conflict of interest register?		
Just to note - there will be a difference as a start-up or small organisation - there is often a merging of management, and governance is often interchangeable. As you grow, strive for greater separation of the two.		

3. Strategy

Why is this important?

Looking to the future is critical and having strategy in place will make sure that your organisation is ready for what is coming.

Questions to provoke discussion	Your notes	Ranking (of 10)
How often do you have a strategy session? Do you discuss outcomes sought each year?		
Do you use a Board composition matrix to guide your Board recruitment? Do you have a Board succession plan? (More questions below on this)		
Do you have Board year-long objectives that are linked to the strategic plan and longer-term strategic plan?		
Key resource: Community Governance Aotearoa		
How do those new to governance come up to speed with their role and requirements? Do you have a structured plan to onboard new people?		

3. Strategy - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
Can you use your Board opportunities for developing people into future governance positions, yours or others?		
Is this facilitated for optimal success?		
How actively involved are the Board and CEO in fundraising?		
Are key staff given the opportunity to present to the Board rather than all communications going through the CEO?		
Do you have a governance skills matrix to map individual Board member skills with the needs of the organisation from time to time, especially when a Board member exits or there is a major change/event such as a pandemic, new building construction, etc.?		
To take this further, do you have a clear selection checklist and process to refer to when looking to bring on another person to governance that identifies the characteristics, skills and values you are looking for? Have some Board members been there a very long time and is it time for new perspectives?		
Does the Board assess what skills they are lacking among themselves and build a network of advisors who could support them on a more regular basis - not just when there is an issue?		
Do you have a longer-term strategic plan (five years) that has been facilitated with the Board members and representative stakeholders?		
How does your Board define and monitor strategy risks - i.e. the risks, both positive and negative, that will create strategic advantage for your mission/organisation?		
Does the Board meet each year to review the strategic plan?		

4. Practical steps for good governance

Why is this important?

Ensuring good governance involves actively planning so there can be continual learning.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do Officers have a learning and development plan, including Governance?		
Is there a standing agenda? How much time does it allocate for each matter? Is it forward-looking - less on the past and more on the future?		
Are Board members aware of key operating policies that affect them? Could they be included in an operating handbook for everyone?		
Key resource: Board matters podcast		
Do you know about the “prudent businessperson” test for making decisions - i.e. what would such a person do (not a “perfect” businessperson)? What steps are taken to safeguard decisions and the decision-making process?		
Have you explored Board member liability? Are there protections provided in the founding document, e.g. insurance cover? How about arrangement of Board members’ personal affairs (e.g. family trust, etc)?		
Do all those in governance understand best practices for minute-keeping and resolutions? Who is your governance team resource person in this area?		
Have the officers considered doing the forward-looking matters first, followed by the standard items like minutes approval etc? Too often we get focused on the past and not considering the future instead.		
When are Board papers circulated - at least one week before the meeting?		
Have the Trust Deed provisions about liability and indemnification been updated to reflect the Trusts Act 2019?		

4. Practical steps for good governance - Cont.

Questions to provoke discussion	Your notes
Who reviews the content of the Annual Return (in addition to the Performance Report? Is there agreement on a process and schedule for review of policies?	
All those in governance should understand the financial statements, rather than relying only on the treasurer.	
Storage of all records - where, who is responsible for them, how are they kept secure, e.g. are they digitised? Who is the alternate custodian (in the event of accident etc.)?	
Are you fulfilling Charities Services reporting obligations? For example, have you alerted Charities Services to those who have retired?	
How do you ensure officers understand the financial position of the entity and the relevant risks before accepting the role?	
Do you have an online Board portal? As you grow, consider options such as BoardPro.	
Do you have an impact model? Have you considered how to protect your purpose? See How to Lock your Mission	

Resources

Perhaps these Healthcheck Guides have got you excited for ensuring best practice and wanting more information!

If so, then check out these free resources as well:

Written guides and resources

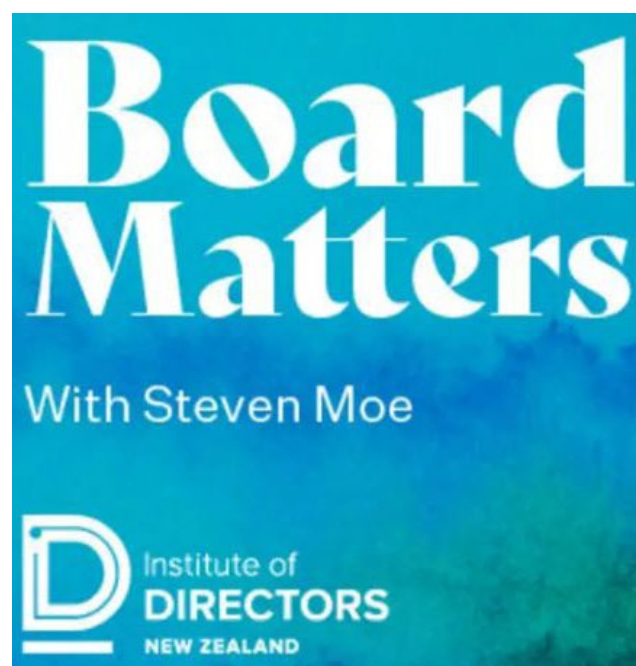
- [Charities in New Zealand: A Legal Handbook](#)
- [Governance Masterclass: 7 scenarios](#)
- [Governance essentials hub](#)
- [10 minutes on how to set up an impact driven organisation](#)
- [Social Enterprises in New Zealand: A Legal Handbook](#)
- [Health and Safety regarding volunteers](#)
- [Start-ups guide](#)
- [Governance podcast for IOD](#)
- [Impact Investing in NZ](#)
- [Reimagining Business Book](#)
- [Seeds podcast](#)
- [About privacy policies and what they should cover](#)
- [Capital Raising Guide](#)
- [Summary of two day IOD Leadership Conference](#)
- [Article on different types of roles: Volunteers, Employees, Contractors](#)
- [Trust control over other trusts article](#)
- [The Good Governance Code](#)

Governance related videos

- [Chairing the Board](#)
- [Governance Masterclass - 7 scenarios](#)

Other websites

- [Charities Services on types of tiers](#)
- [Charities Services guide for new board members](#)
- [NZ Navigator online charity assessment kit](#)
- [Community Governance Aotearoa](#)
- [IOD NFP site](#)
- [Community Networks Aotearoa: Tick for Governance course](#)
- [‘Better Banking’ report from CNA](#)
- [Christian Savings on long term maintenance plans](#)
- [Community Law Manual](#)
- [Questions on reputational risks](#)



We hope this is helpful.

What else should we refer to in future editions?