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Lawyers



Charities Healthcheck

(and the questions you should ask)

A collaborative guide

Part 4/6

Assets

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,
Steven Moe

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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/>

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Part IV: Charities

Healthcheck: Assets

11. Property

Why is this important?

Property will be a key asset of a charity so it is important to look after it well.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do you have a costed long-term maintenance plan in place for your properties? Who is responsible for this and ensuring it does happen?		
Which entity owns the land and buildings your organisation uses?		
Should an entity be formed to hold the land/assets separate to your organisation to “ring fence” liability?		
Key resource: Christian Savings on long term maintenance plans		
Does your depreciation policy match your long-term maintenance costs and expected lifetime of your real (property) assets? Do you factor in these costs to your budgeting and reserves?		
Do you have seismic reports for buildings where relevant?		
Is your property compliance and/or Building Warrant of Fitness up to date? Do you have a process for checking that fire alarms, fire extinguishers, automatic doors, security/alarms, sprinklers etc. are compliant and checked and certified (council etc.)?		
Do you have muster points for emergencies? Are these clearly notified to all users of the space?		
Have you appointed fire wardens in the event of a building evacuation?		
Do your health and safety policies clearly match the risks of the building you are using?		
Do you have “Right of admission reserved” signage?		

12. Finances

Why is this important?

Taking care of the finances is vital for a charity to be able to operate and advance its purposes - having good processes in place will ensure the long-term viability of the organisation.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do you have appropriate systems and processes for monitoring your financial solvency?		
Are you reporting in line with the correct financial reporting tier of charity? There are four tiers.		
Do you have financial reserves to keep your organisation functioning through a change in circumstances?		
Key resource: XRB guidance for charities on tiers and reporting		
Do trustees understand how revenue and costs are incurred and have the ability to meaningfully analyse financial and non-financial information?		
Are you GST registered? And if so, do you have a regular and ongoing income stream (other than donations) to keep your GST registration current?		
How relevant is your Reserves Policy and SIPO (statement of investment policy and objectives)? How are these framed to enable your mission to innovate, experiment, learn and grow?		
Have you put aside savings for ongoing operations (minimum of three months of your average operational expenditure) and maintenance obligations on your property and other assets?		
Do you have three months operating expenses in savings accounts or a reserves policy? How about enough to cover other contractual or construction commitments?		
Material variances versus budget should be highlighted as well as how many months reserves are held.		

12. Finances - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
<p>Are you a donee organisation? Do you know what percentage of your income is applied in NZ and overseas? (“Wholly or mainly” is a test of whether you can stay with tax one status - it means no more than 25% “of their funds” go offshore). Here is a guide if this is relevant.</p>		
<p>Is there a segregation of finance duties? Consider separation of duties to avoid financial fraud. i.e. separating the functions of admin processing, approval and payment. If not, then have final authorisation from a separate person.</p>		
<p>Do you have effective controls around expenditure authorisation, such as two people to authorise payments and evidence that the invoices were approved first?</p>		
<p>Do you have a position on applying for funding from gaming trusts, lotteries etc., given the funding is from gambling?</p>		
<p>Are your accounts audited each year? This may not be required.</p>		
<p>Do you have a budget development and approval process in place?</p>		
<p>Are your tax obligations known and documented and managed e.g. GST, PAYE, records maintained, filings made in a timely manner?</p>		
<p>Is your GST registration still valid? For example are you producing revenue from a taxable activity?</p>		
<p>Is your Performance Report audited, reviewed or prepared by a Chartered Accountant? Do you know what your Trust Deed requires?</p>		
<p>Do you have a Koha Policy?</p>		

12. Finances - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
What is your policy concerning receiving sponsorship, gifts, or koha from certain categories (e.g. fossil fuel related) of individuals, grantmakers or sponsors?		
What policies do you have for actively stewarding (e.g. receipting, thanking and reporting) your donors, grantmakers, sponsors and other providers of resources?		

13. Finance controls

Why is this important?

Having controls in place to ensure that the finances are looked after is critical to the long-term viability of the organisation.

Questions to provoke discussion	Your notes	Ranking (of 10)
What internal controls are in place to manage financial matters?		
Who has delegated authority to spend money? What are the parameters of that authority?		
Is there a fraud policy in place (deterrence and detection)?		
Key resource: CAANZ tools and resources		
Do you have management approval limits for expenditure?		
Do you have a minuted resolution covering authorisation of paperless financial transactions?		
How often are subscription levels reviewed?		
Have you removed retired Board members as bank signatories? Do you have a process for ensuring this happens?		

13. Finance controls - Cont.

Questions to provoke discussion	Your notes	Ranking (of 10)
<p>Are you aware of what compliance is needed for AML (anti-money laundering) compliance? What steps have you put in place to ensure your resources aren't being used in criminal activities here or overseas?</p>		
<p>What policies and procedures are in place on receipt of funds? Are staff/volunteers trained on recognising and reporting suspicious transactions? Are they aware of obligations under AML/CFT Act (and if this is even applicable)?</p>		
<p>Do you have a Reserves Policy? Uncertain funding from government, grants from charitable trusts, bequests, subscriptions, and local fundraising efforts makes planning difficult, so plan ahead with cash reserves.</p>		
<p>Is there a process for ensuring credit card spending is being reviewed?</p>		
<p>Who has access to your organisation's financial records/bank signing authorities? Credit card spending should have authorisation at a level one up from the card holder.</p>		
<p>Is the financial report being given in context of the budget your Board approved, or did things change?</p>		
<p>Suggested financial reports for regular Board review:</p> <ul style="list-style-type: none"> • Statement of income and expenditure by month (since last meeting) • Statement of income and expenditure year to date versus Budget • Balance sheet 		

14. Reporting on impact

Why is this important?

Your organisation may be doing amazing work but how are you telling others about it? Doing so well will ensure there is interest and support from volunteers, funders and other stakeholders.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do your annual accounts clearly communicate your impact?		
Have you considered Impact Reporting and what this means for your organisation?		
There is often a clear gap in reporting by Charities on the non-financial aspects. It is good to define what success is, but more importantly to set out how you think you will achieve your goals for the year, and how you have performed against those goals.		
Key resource: Charities Services guide on reporting		
Ensure your operating activities align with the founding document and strategy.		
What numbers do you want to report on and how can you verify these figures?		
Transparency is important - systems that provide for consistent and robust non-financial reporting (similar to those for financial reporting) should help funders get on board and reward your organisation.		
Impact reporting is more than non-financial reporting, its having a theory of change and then how you intend to measure it e.g. an evaluation and monitoring framework.		

15. Insurance

Why is this important?

Things do go wrong - insurance helps provide a safety net for if those things happen.

Questions to provoke discussion	Your notes	Ranking (of 10)
What insurance do you have in place?		
Are coverage and excess terms appropriate? Do you understand the scope of coverage and any exclusions?		
When were your insurance policies last reviewed? Do you have a review schedule?		
Key resource: Article on why insurance matters		
Liability insurance - Is this needed? What type(s)? Level of cover? When was it last reviewed?		
Have you looked into directors and officers (D&O) or trustee cover?		
Are all vehicles insured, registered and regularly maintained? Is there safe a place to store vehicles on site to prevent theft?		

16. Related trusts / other stakeholders

Why is this important?

Having a clear relationship with other related or other groups is vital.

Questions to provoke discussion	Your notes	Ranking (of 10)
What links are there between your organisation and related groups?		
Your organisation may have led to others being created - does your group remain an umbrella group or are they separate?		
Should the ties be strengthened, or loosened?		
Key resource: 10 minutes on how to set up an impact-driven organisation		
Do officers understand trusts or other entity types and the limitations that they can impose?		
Are links documented and understood by officers and management? If so, are they utilised effectively or do they need to be discontinued?		
Do you have education and links on conflict of interest guidance/education?		
Do you have a Conflict of Interest Policy?		

17. Other entity legal structures

Why is this important?

Sometimes our organisations are linked to others which are aligned to what you do - so how do you relate with them? What entity type should they be?

Questions to provoke discussion	Your notes	Ranking (of 10)
How are any aligned initiatives structured? Consider preschools, cafés, funeral homes, counselling services, social housing etc.		
Have you considered “ring fencing” them in separate entities rather than being under umbrella of your group?		
If so, what is the best legal “vehicle” to drive those initiatives? Consider the options such as company, trust, partnership, incorporated society.		
Key resource: 10 minutes on how to set up an impact driven organisation		
What arrangements are in place with other groups e.g. youth work in schools or similar?		
Understand who has “control” of which entity, and the impact this has on your reporting obligations.		
If one entity can appoint/remove governance of another, you may need to consolidate accounts between the separate entities.		
Is your organisation type the best for what you do, e.g. incorporated society - is it fit for purpose, does it protect your assets, does it reduce your liability? That entity type can be political and have takeovers - consider what vehicle is best? Ask me for a guide on entity types if this is of interest.		

18. Contracts

Why is this important?

Contracts set out how your organisation will relate with other group - suppliers, customers, contractors, government - being clear is important.

Questions to provoke discussion	Your notes	Ranking (of 10)
Do you have a contract/agreement register clarifying who is responsible for each relationship?		
Are agreements in written form or verbal only? For key supplier/customers, ensure they are written and signed/dated.		
Check key clauses like in your contracts/agreements, such as: termination rights, indemnities, liability, right to vary, scope of services.		
Key resource: Startups legal toolkit		
Do you regularly check end dates for agreements or have a schedule of time frames so agreements are renewed at the right time?		
Does your organisation have a relationship with a professional services firm to assist with issues? Ask about pro bono or discounted support.		
What is your process for reviewing and negotiating contracts/agreements. Who can legally bind your organisation?		
Who oversees contractual obligations of your organisation? Do you understand the legal implications and obligations of the current agreements you have entered into?		

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

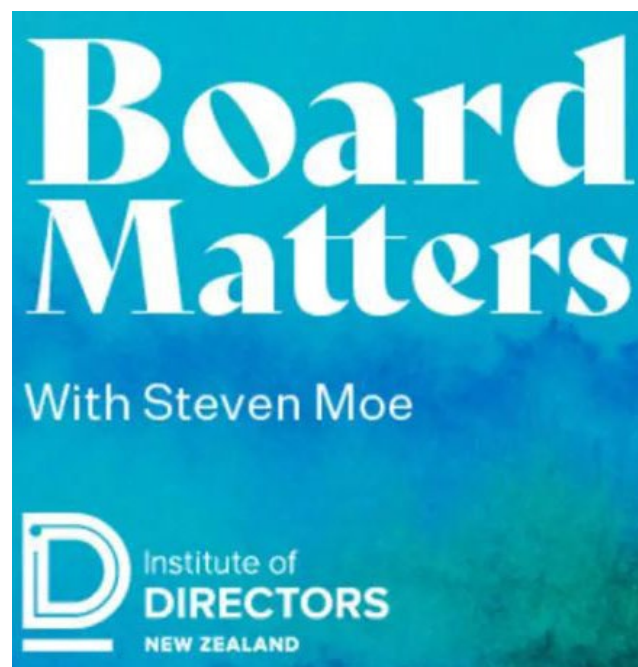
- [Charities in New Zealand: A Legal Handbook](#)
- [Governance Masterclass: 7 scenarios](#)
- [Governance essentials hub](#)
- [10 minutes on how to set up an impact driven organisation](#)
- [Social Enterprises in New Zealand: A Legal Handbook](#)
- [Health and Safety regarding volunteers](#)
- [Start-ups 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?