

LEGAL RESOURCE MANUAL



Published by North Shore Community and Social Service
PO Box 33 284, Takapuna, Auckland 9
Phone/Fax: (09) 486 4820
Email admin@nscss.org.nz
A Community Resource 2000

ISBN 0-9582209-0-5

Legal Resource Manual – July 2000

TABLE OF CONTENTS

DISCLAIMER	Page 3
LEGAL STRUCTURES	Page 3
Incorporated Societies Act 1908	Page 3
Charitable Trusts Act	Page 4
CONSTITUTIONS	Page 6
Societies	Page 6
Legal Structures	Page 7
GOVERNANCE	Page 8
Liability	Page 8
The Privacy Act 1993	Page 8
The Human Rights Act 1993	Page 10
Health and disability Commissioner Act 1994	Page 12
EMPLOYMENT	Page 13
Health and Safety in Employment Act 1992	Page 13
The Employment Relations Act 2000	Page 13
FINANCIAL	Page 16
IRD Requirements	Page 16
Taxation Concessions	Page 20
GENERAL	Page 23
Policies and procedures	Page 23
Ministry of Commerce requirements	Page 26
Insurance	Page 27
CHECKLIST	Page 28

DISCLAIMER

Every effort has been made to ensure that the information in this guide is accurate to the best knowledge of the author, and the Legal Services Board as at June 2000. However, no liability is assumed by the author or the Legal Services Board for any losses suffered by any person relying directly or indirectly on this publication. Readers should seek legal advice for their particular situation.

LEGAL STRUCTURES

WHY HAVE A LEGAL STRUCTURE?

- provides group with its own unique legal name
- To allow the opportunity for the group to incorporate and create a separate entity. This protects the members from being personally liable for the debts and actions of the group in most circumstances.
- Gives much greater access to funding and grants; groups with no legal status are often required to apply through an Umbrella group, and/or are ineligible for larger grants
- Provides a formal structure, including a process of winding up
- Gives the organisation credibility and recognition
- Group can open bank accounts, own property, sue, be sued, take out loans
- Can enter contracts under its own name
- Has a structured means of surviving its initiating members
- May allow the group to apply for charitable status so that the group does not have to pay income tax (you will still be liable for GST and PAYE)

THE INCORPORATED SOCIETIES ACT 1908 - an Act to make provision for the incorporation of groups of people (with at least 15 members) which are established for any lawful purpose (but not for pecuniary gain)

WHAT IS INCORPORATED SOCIETY?

It is a group or organisation that has been registered under the Incorporated Societies Act is authorised by law to run its affairs as though it were an individual person.

There is a wide range of groups and organisations which have become incorporated societies. These include sports clubs, social clubs, musical and cultural groups, special interest and activist organisations.

KEY FEATURES

- Set up under a Constitution with rules
- Have a minimum of 15 Members
- Members make the decisions, usually elect management committee
- Annual financial statement to The Ministry of Commerce required
- Any profit beyond wages must be put in to charitable activities which comply with the objects of the society.
- Easy for people to join or leave

THE CHARITABLE TRUSTS ACT 1975

WHAT IS A TRUST?

It is an obligation on the part of the trustees to deal with any property in the manner in which they have been directed, for the benefit of the beneficiaries or the objectives. An organisation can only create a trust if its own rules contain the power to dispose of its property in that manner. The language used in setting up a trust must make it clear that a trust is intended, so it is best to use the words 'on trust for', plain English should be used to state the intention of the organisation as simply and as clearly as possible.

KEY FEATURES

- It has a board of at least two Trustees
- It must be for the charitable purposes as defined in the Charitable Trusts Act 1975
- Trustees make decisions
- There is often limited community or member involvement

CHARITABLE TRUSTS

A charitable trust is one created in respect of property intended for a charitable purpose as defined in the Charitable Trusts Act 1975. In this area of the law 'charitable' has a special legal meaning, different from the meaning in common usage. A list of charitable purpose was drawn up in 1601 which is still used by the Courts today, although they are not regarded as the only charitable purposes possible. That list includes the relief of aged, afflicted or poor people; the aid of young tradesmen and handicraftsmen; the relief or rehabilitation of prisoners and captives. Further purpose have been deemed charitable by the Courts themselves. They are:

- a The advancement of education.
 - b The advancement of religion;
 - c The relief of poverty, sickness or disability; or
 - d Any other purpose that is beneficial to the community not falling within the preceding purposes.
- Public benefit is not required for a purpose falling within paragraphs a) b) or c).
An element of public benefit is necessary for a purpose to fall within paragraph

d). However not every trust or society which has a publicly beneficial purpose will come under paragraph (d).

There are a few advantages in a Charitable Trust eg, income tax is not payable on business income, and the gift can be perpetuated, with interest or monetary return being paid out each year, but the capital of the gift remaining. However, the Charitable Trust will need to be registered and approved by the inland Revenue Department as having charitable status to obtain these tax benefits.

Non-Charitable trusts

All other trusts are called private trusts. These are usually for the benefit of a few people e.g. Family Trust, These will not normally concern clubs or organisations.

Duties of trustees

Basically the trustees must follow the terms of the trust, and be guided in that duty by The Trustee Act, 1956. In general some of the trustees duties are:

- a. to be fair as between the beneficiaries or objectives;
- b. not to delegate his job;
- c. act together, when more than one trustee;
- d. not to receive payment for contributions except where express provision is made;
- e. to keep proper accounts and be prepared to make information available; and
- f. to be scrupulously honest - which means no direct or indirect profit or advantage can be obtained during his role as trustee.

VOLUNTARY WINDING UP

INCORPORATED SOCIETIES

When members of a society feel that the society should be wound up (ie, brought to an end) they can do this by passing a resolution to that effect at a general meeting. The resolution needs only a simple majority of all the valid votes cast by members voting at the general meeting in person. A simple majority is half the votes plus one. The rules cannot change the requirement for a simple majority as this is specified by section 24 (1) of the Act.

If such a resolution is passed, a second general meeting must be called not earlier than thirty days from the first meeting to pass a resolution confirming the earlier decision to wind up the society. Once again a simple majority is required to pass the resolution. If the resolution is lost then the earlier resolution lapses. If the confirming resolution is passed the members must appoint one or more liquidators to wind up the affairs of the society.

The procedure and requirement of a voluntary winding up of a society are the same as for the voluntary winding up of a company under the Companies Act 1993.

CHARITABLE TRUSTS

If a charitable organisation rules or constitution allow it to be wound up, the winding-up clause must prevent the funds or assets from passing to non charitable or private purposes.

CONSTITUTIONS

SOCIETIES

THE RULES

The Incorporated Societies Act 1908 and Charitable Trust Act 1957, lay down a minimum number of points that must be covered on a society's rules. This is a minimum and you may want to expand the rules to cover all foreseeable circumstances.

These minimum requirements are reprinted below along with explanatory comments to help you make up a set of rules:

Incorporated societies - (1) The rules of a society shall state or provide for the following matters:

- **“The name of society, with addition of the word “Incorporated” as the last word in that name:”**
It is normal practice for the first rule to read “Rule 1: The name of this society is The Wellington Hot Air Society Incorporated.” Note that the word Incorporated must be in full.
- **“The objects for which the society is established:”**
This is a statement of the purpose and aims of the society. The objects should be as broad as possible to ensure that all the activities you may want to pursue now or in the future are covered. The objects are different from the powers of a society. (The powers allow a society to *fulfil* and carry out its objects)
- **“The modes in which a person becomes a member of the society:”**
You must describe the way in which prospective members apply to join and who decides whether the application should be accepted.
- **“The modes in which persons cease to be members of the society:”**
Set down the ways in which members can resign or how they can have their membership terminated for such things as non-payment of subscriptions, breaching rules or bringing the society into disrepute.
- **“The mode in which the rules of the society may be altered, added to, or rescinded:”**
As time passes and the membership changes some rules may become outdated or circumstances may arise which are not covered by the rules. To overcome such problems you must include a rule which describes when and how the rules can be altered etc.

- **“The mode of summoning and holding a general meeting of the society, and of voting thereat:”**

There are three types of general meetings a society can hold. Annual general meetings, the regular (eg monthly) general meetings for the normal conduct of the society’s business and the special general meetings that are called as required to deal with special matter or topic. You must make rules to cover when the meetings will be held, how members are to be advised of the time and place of the meeting and how the meeting will be conducted ie chairperson, quorum, notices of motion, the type of voting to be used and how special general meetings may be called, how meetings are adjourned, appointment of corporate representatives, the keeping of proper and accurate records of all meetings.

- **“The appointment of officers of the society:”**

You will need rules that specify what officers the society will have, eg president or chairperson, secretary, treasurer, how many committee members, and how they are to be elected. The rules may provide for the officers to comprise a management committee and provision of subcommittees and associated rules.

- **“The control and use of the common seal of the society:”**

The common seal is a rubber stamp used on documents issued in the name of the society to show they are valid. As the seal is a very valuable item, it must be kept in the custody of a responsible person at all times (eg the secretary) and used only as authorised. There must be a rule which says who will have control of the seal and details the circumstances in which it can be used.

- **“The control and investment of the funds of the society:”**

Rules are required that specify how money is to be handled, ie who will receive it, write receipts, open and operate bank accounts, write cheques and make payments. If you wish to invest surplus funds, rules will be required to make investments and to specify what types of investments are permitted.

- **“The powers (if any) of the society to borrow money:”**

If you envisage ever having to borrow money, you must have a rule outlining the procedure for authorising the loan, eg by resolution passed at an annual general meeting. A word of warning - check to see if the purpose for which you want the money is permitted in your constitution or Trust Deed.

- **“The disposition of the property of the society in the event of the winding up the society:”**

When a society comes to the end of its existence it is wound up and any surplus assets are available for disposal. A rule is required that states who or what is to receive the surplus, or makes provision for this decision to be made at a later date, eg at the time of winding up. It is possible for the surplus to be given to one or more societies, usually with similar objects and activities or a parent body.

- **“Such other matters as the Registrar may require to be provided for in any particular instance:”**

If the Registrar feels that rules as presented are not adequate, even if all the above points are included, he or she can require additions or alterations to be made before the society can be incorporated.

APPOINTMENT/RESIGNATION OF TRUSTEES

All appointments and resignations of trustees must be in the form of a ‘minute’ signed by the Chairperson and a copy shall be forwarded to the Ministry of Commerce for their records. To ensure accountability it is important to notify any changes of trustees. There is no legal requirement to advise the Ministry of Commerce of any changes of trustees. If however you do advise them they will note the file for you.

LEGAL STRUCTURES

POSSIBLE LEGAL STRUCTURES FOR VOLUNTARY ORGANISATIONS		
	Incorporated Society	Charitable Trust
Aims	Often Charitable, but don't have to be	Must be charitable
Rules	Set up under Charitable Trust Act 1957. Has a trust deed with rules, which must include: <ul style="list-style-type: none"> • introduction; date trust was set up; • why it is being set up; • occupations and addresses of all trustees; • aims; • power: can be as wide or narrow as group wants eg to employ staff, apply for grants, buy or lease property; • rules board will operate under; 	Set up under Charitable Trust Act 1957. Has a trust deed with rules, which must include: <ul style="list-style-type: none"> • introduction; date trust was set up; • why it is being set up; • occupations and addresses of all trustees; • aims; • power: can be as wide or narrow as group wants eg to employ staff, apply for grants, buy or lease property; • rules board will operate under
Setting up costs	\$100	Free
Size	Minimum of 15 members	Minimum of two trustees
Charitable status	Can apply for charitable status	Can apply for charitable status
Members	Made up of members who may join or leave according to membership rules; must have up-to-date register of current members showing name, address, occupation, date they become a member	No members. Trustees run the trust for the benefit of others. Trustees remain on office until they retire or the term set out in trust deed expires
Decision making	By members at General Meetings and by committee. Usually an elected management committee	By trustees. AGM and ordinary meetings not automatically open to beneficiaries unless specified in trust deed
Accountability	committee is accountable to its members	Trustees not accountable in specific way. Accountability through trust deed and Charitable Trust Act
Ministry of Commerce requirements	Must keep list of members, and send annual Financial accounts to Registrar of Incorporated Societies	Must act within law covering trusts, but no particular reporting requirements
Profits	Can make profits and employ people but cannot distribute profits to members	Any profit has to be used for charitable aims
Liability	Members are not personally liable for debts in most circumstances	Trustees are not personally liable for debts if trust is incorporated and trustees have acted responsibly
Winding up	Can be wound up, voluntarily by members, or by high court if society suspends operation for a year, has less than 15 members, is unable to pay debts, or if individual members profit. Surplus assets can be distributed among members	Can be wound up voluntarily by trustees at any time, unless stipulated in deed, or by High Court if it believes it is just and equitable to do so. Surplus assets must be distributed to other charitable organisations

OTHER LEGAL STRUCTURES

Maori Land Trusts (under Te Ture Whenua Maori Act 1993) Putea, whanau, ahu whenua, whenua topu, & kai tiaki trusts

Industrial and Provident Society

Company - Companies can be community owned and have charitable purpose

GOVERNANCE

LIABILITY

Decision makers of both an Incorporated Society or a Charitable Trust may be held to be personally liable upon the Liquidation or winding up of that entity if they are found to have

- misappropriated funds
- been guilty of negligence, default or breach of duty or trust in relation to the board
- failed to keep proper accounting records.

CONTRACTS

All contracts should be signed as provided for by the organisations Constitution or trust Deed

Contracts on behalf of a Board shall be effectual in law, and shall bind the Board and its successors and all parties to the contract.

THE PRIVACY ACT 1993

The purpose of the act is to establish certain principles with respect to:

A 1 the collection, use and disclosure, by public and private sector agencies of information relating to individuals and

2 access by each individual to information relating to that individual and held by public and private sector agencies.

B To provide for the appointment of a Privacy Commissioner to investigate complaints about interferences with individual privacy.

In the Privacy Act, the full requirements concerning collection of personal information are set out on principle 1-4.

Each organisation must appoint a privacy officer. This person is responsible for

- Encouraging compliance with the Act
- Dealing with requests made to the organisation relating to personal information
- Assisting the commissioner with any investigation relating to the organisation

Principle 1 provides that information may only be collected by an agency if it is collected for lawful purposes connected with your organisations activities providing the information is necessary for that purpose.

Organisations should ask:

- Why do we ask this question?
- What use do we make of this information?

A Society will usually have a valid reason in asking for a person's contact details eg. for the purpose of collecting membership fees and/or for compiling a contact list. The range of information collected by a society will depend on its functions and activities. For instance, some service organisations in order to perform effectively, may require sensitive information about individuals, eg. a group providing assistance for people with physical disabilities will need to know the individual's disability, and the kind of assistance needed, so that it can provide appropriate help.

Principle 3 requires societies to take reasonable steps to ensure that the individual is aware of certain matters when information is collected directly from that person. These steps must be taken unless that is not practicable before the information is collected. These include:

- the fact that information is being collected; and the purpose for which the information is being collected;
- the intended recipients of the information;
- the name and address of the agency collecting and the agency holding the information;
- the consequences if any, of not providing the information;
- the rights of access to and correction of personal information.

Societies should make their information practices clear to the members. For instance, if a society uses circulated contact lists, members should be informed of this before they give their personal details. Societies should consider whether they will allow members the option of not being on this circulated list. If a form is used to collect details, it should include a box to be ticked if the individual agrees to have his or her details used for this list. Societies may also wish to pass the details to a regional or national body, or to publish them in a directory, and again this should be made clear.

Members should be given the opportunity to keep their details private if publication is not essential for membership.

Principle 5 - Storage and security of personal information. Information must be protected against loss or unauthorised use modification or disclosure.

Principle 6 - Access to personal information - individuals may ascertain whether personal information about them is held and be able to access that information.

Principle 7 - Correction of personal information – if an agency holds personal information the individual concerned is entitled to request that the information be corrected if there is an inaccuracy in it or if the agency refuses to correct it that there be attached to the information a statement of the correction sought but not made.

Principle 8 - Accuracy of personal information to be checked before use.

Principle 9 - Agency must not keep personal information longer than necessary.

Principle 10 - 11 - limits the use and disclosure of personal information. It may be desirable in some situations to disclose information about members, to other members of society or even to an outside organisation. This is possible, provided that one of the exceptions contained in principle 11 permits the disclosure, e.g. that the person concerned authorises the disclosure.

Principle 12 - deals with unique identifiers.

There is no restriction on the use of information which was obtained before 1st July 1993. If you are disclosing information gathered prior to that date, you should however, receive permission from person involved.

MEMBERSHIP LISTS

If membership lists or directories are distributed to members, a notice should be included, that the information is for society membership only and may not be used for any other purpose such as direct marketing or for soliciting donations to other organisations.

MINUTES OF MEETING

If minutes contain information about an individual, that person may view the information before publication.

HUMAN RIGHTS ACT 1993

AN INTRODUCTION

The Human Rights Act 1993 provides greater protection for people facing discrimination. Its intention is to ensure people are treated fairly in a number of areas of public life. If you believe you have been discriminated against, you can ask the Human Rights Commission for assistance.

PROTECTION AGAINST DISCRIMINATION FOR PEOPLE WITH DISABILITIES

From 1 February 1994 discrimination based on disability is unlawful under the Human Rights Act 1993. This is subject to certain exceptions which are set out in the Act. Those who feel they have been discriminated against will be able to complain to the Human Rights Commission.

GROUNDINGS OF SEXUAL ORIENTATION

The Human Rights Act 1993 makes it unlawful to discriminate, either directly or indirectly, against a person on the grounds of their sexual orientation. This applies in the areas of employment, access to public places, provision of goods and services, accommodation and educational facilities.

Sexual orientation is defined as a heterosexual, homosexual, lesbian or bisexual. Relatives or associates are also protected against discrimination.

Direct discrimination

This occurs when a person of one particular sexual orientation is treated less favourably than a person of another sexual orientation in the same or similar circumstances. This also occurs if a person is discriminated against on the presumption of a particular sexual orientation.

Discrimination on the grounds of aids or HIV infection

The Human Rights Act 1993 protect those who have AIDS or HIV infection from discrimination. From 1 February 1994 it has been unlawful to discriminate against those with an organism in the body capable of causing illness, including those who are HIV positive or who have AIDS. Protection also exists for those who are assumed to be HIV positive or have AIDS. Misconceptions about AIDS have resulted in discrimination against particular groups such as homosexual. The intention of the Act is to ensure that people with a range of disabilities, including physical illness, are treated fairly.

WHAT AREAS OF LIFE ARE COVERED BY THE ACT?

The Human Rights Act 1993 protect those with AIDS and HIV infection in the following areas: employment; accommodation; access to public places; provision of goods and services; educational facilities.

Protection against discrimination in accommodation

The Human Rights Act 1993 protect people from discrimination in the provision of accommodation. From 1 February 1994 it is unlawful to discriminate against those seeking accommodation on a wide variety of grounds.

Protection against discrimination on the grounds of age

The Human Rights Act 1993 makes it unlawful to discriminate, either directly or indirectly, against a person on the grounds of their age, providing they are sixteen years of age or older. This applies in the areas of employment, access to public places, provision of goods and services, education and accommodation.

WHAT IS UNLAWFUL DISCRIMINATION?

From 1 February 1994, protection against discrimination is increased. Previously it was unlawful to discriminate against someone on the grounds of sex, marital status, religious or ethical belief, race, colour, ethnic or national origins, and age (in employment).

Added grounds now include: physical or mental illness, political opinion (which includes lack of political opinion or any political opinion), employment status (which includes the receipt of a benefit or compensation). There is also greater coverage of age.

HEALTH AND DISABILITY COMMISSIONER ACT 1994

This Act is to promote and protect the rights of consumers of health and disability services. Under the Act the Commissioner prepared a code which applies to providers of Health or Disability services. These providers must take reasonable steps to comply with the duties set out in the code. There are 10 consumer rights which relate to

- Respect and Privacy
- Fair Treatment
- Dignity and Independence
- Proper Standards
- Effective communication
- Information
- Personal choices and Decisions
- Support
- Rights During Teaching and Research
- Rights for complaints to be taken seriously.

EMPLOYMENT

HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

Under the Health and Safety in Employment Act 1992 (HSE Act), an employer has legal responsibilities to an employee.

Employers must take all practicable steps to ensure the safety of employees while at work by:

- providing and maintaining a safe working environment;
- providing and maintaining safety and health facilities;
- ensuring that employees are not exposed to hazards arising out of the arrangement of the workplace, the disposal, manipulation, organisation, processing, storage, transport of goods, working or using equipment either in the workplace itself, or near the workplace and under the employer's control; and
- developing procedures for dealing with any emergency which may arise.

PROVIDING INFORMATION

Part of your employer's responsibilities is to provide information in a manner that is easily understood

- the identified hazards that you will encounter;
- the identified hazard that you will or may create;
- the steps to take with those hazards to prevent harm;
- what to do in an emergency;
- where all safety clothing, equipment and materials are kept, and the training in the correct usage.

EMPLOYMENT RELATIONS ACT 2000

The Employment Relations Act 2000 which replaces The Employment Contracts Act 1991 and came into effect on the 2nd October 2000 and The Holidays Act 2003 which came into effect on the 1st April 2004.

WHAT IS "GOOD FAITH"?

At the most basic level, good faith means you are not allowed to mislead or deceive your employees or their unions, and they are not allowed to mislead or deceive you. You have to respect the authority of your employees' union and you can't discriminate for or against anyone based on their union membership. Beyond these minimum requirements, common sense will usually be enough to determine what is "good faith" and what is not.

WHAT IS AN EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENTS MUST:

- Include effective personal grievance and dispute procedures.

- Specify (for collective agreements) an expiry date.
- Comply with the minimum conditions of the other Acts, which include:
 - Minimum wages for those over 20 years old
 - Equal pay
 - Protection against unlawful deductions from pay
 - Paid statutory holidays
 - Paid annual holidays
 - Paid special leave for sickness, domestic and bereavement reasons
 - Job protection for defence force volunteers.

It is illegal to employ a person without an employment agreement in place. The Holidays Act 2003 and the Employment Relations Act 2000 need to be considered together when determining both employer and employee obligations.

TYPES OF AGREEMENTS

There are two types of agreements individual and collective

Individual - are binding on only one individual and one employer.

Individual agreements can be verbal or written. An employee can request a written copy of the agreement at any time. Individual workers may be bound by more than 1 agreement

Collective - involves one or more employers and two or more workers. These must be in writing. When a collective agreement applies to 20 or more people, a copy must be lodged with the secretary of Labour PO Box 3705 Wellington.

NEGOTIATING AN INDIVIDUAL AGREEMENT:

You have to negotiate in good faith, which means both you and the employee have to listen to the other's point of view.

Beyond that, there is a requirement that if and when you reach an agreement the employer has to be confident that the employee is able to understand its provisions. Particular care has to be taken if the employee is young, sick or emotionally distressed. Particular care must also be taken if the employee has a mental, educational or communication disability. You must also ensure the person has the opportunity to seek independent advice and doesn't rely on your advice or the advice of someone acting on your behalf.

If and when you reach an agreement, it has to be in writing, and the following must be included:

- The names of the people the agreement is between
- A description of the work to be performed
- An indication of where the work is to be performed
- An indication of when the work is to be performed
- The wages or salary to be paid
- A plain-language explanation of the services available to resolve any problems (a suggested wording is available from the Employment Relations Service)

- A reference to the fact personal grievances must be lodged within 90 days of any incidents occurring
- Anything else you have agreed.

Also, the agreement can't contain anything illegal. Employment Agreements *must* include

- effective personal grievance and dispute procedures.
- Specify (for collective agreements) an expiry date.
- Comply with the minimum conditions of the other Acts, which include:
 - Minimum wages for those over 20 years old
 - Equal pay
 - Protection against unlawful deductions from pay
 - Paid statutory holidays
 - Paid annual holidays
 - Paid special leave for sickness, domestic and bereavement reasons
 - Job protection for defence force volunteers.

It is illegal to employ a person without an employment agreement in place. The Holidays Act 2003 and the Employment Relations Act 2000 need to be considered together when determining both employer and employee obligations.

Employment Relations Act 2000

Holidays Act 2003

Minimum Wage Act 1983

Wages Protection Act 1983

Equal Pay act 1972

Parental Leave and Employment protection Act 1987

Accident Rehabilitation and Compensation Insurance act 1992

**SEEK GOOD ADVICE EARLY IN THE PROCESS TO AVOID
UNNECESSARY EXPENSE**

FINANCIAL

INLAND REVENUE REQUIREMENTS

Goods and Services Tax Act 1985 is a tax on consumption. It is charged and accounted for at a rate of 12.5%

REGISTERING FOR GST

If your charitable organisation runs a taxable activity with an annual turnover (total income before expenses) of \$40,000 or more, you must register it for GST with Inland Revenue. Below that figure, registration is optional.

To work out the turnover, include only the income which is liable for GST. Do not include income that is not liable for GST, or income exempt from GST. For example, include income from trading activities (both with members and non-members),

subscriptions, and grants and subsidies, but exclude income from donations, koha, bequests, residential rent, interest and dividends.

If at the end of any month, the organisation's turnover for the past 12 months is more than \$30,000, it will need to register. Also, if any time you think the organisation's turnover for the next 12 months will be over \$40,000. You will need to become GST registered.

To register for GST, you will need to complete a GST application form obtainable from Inland Revenue office.

EMPLOYING STAFF

If your charitable organisation employs staff, you must register as an employer with Inland Revenue. To do this, you will need to complete an IR 66K form. IRD will give you all the information you need about the tax obligations of an employer and will issue your organisation with an IRD number.

These are the main things you will have to do as an employer:

- Ask each employee to fill in an IR 12/13 PAYE Deduction Certificate, which will tell you the rate of tax to take out of their wages. (should an employee not fill in an IR 12, you must deduct his tax at a higher rate).
- Deduct PAYE from your employee's wages, and pay it in to Inland Revenue either once or twice a month, depending on the total amounts of wages that your organisation pays. PAYE includes the ACC Earner Premium, which covers the cost of employee's non-work injuries.
- Pay an ACC Employer Premium on your employees' wages, to cover the cost of work-related injuries .
- Pay Fringe Benefit Tax on any fringe benefits (perks) you give to your employees.
- Complete a schedule to report the dates that any employees start or finish working for you.
- Deduct Child Support from employees' wages if required.
- Deduct Student Loan repayments from employee's wages if required.
- Complete Employee's monthly schedules

EMPLOYEES AND CONTRACTORS

If any members carry out paid work for the organisation, they are treated as employees. PAYE must be deducted from the payments they receive. If the organisation gives board and lodging rather than money to any employees for their work, you must work out the gross value of the benefits given to them, calculate PAYE based on this amount, and pay it to Inland Revenue. Other benefits paid to replace wages may be liable to Fringe Benefit Tax

PAYE deducted from your employees' wages is money held in trust of the Crown. You do not need to keep it in a separate bank account, apart from all other funds, but it must not be used for anything other than payment to Inland Revenue. Failing to account for PAYE is an offense, and there are penalties imposed for it.

If a self-employed contractor does a job for the organisation, this does not generally make the organisation an employer. However, if the job is one of those listed on the back of the IR 13 Withholding Payment Deduction Certificate, you must deduct tax at the flat rate shown, and pay this in to Inland Revenue. You must also ask the contractor to fill in the top part of the IR 13 form. If the contractor shows you a current Certificate of Exemption (IR 118), or is an incorporated company, you do not need to deduct withholding tax. Likewise, if the type of work done is not listed on the IR 13, you don't need to deduct tax. In these cases, the contractor is responsible for paying the tax.

Some workers call themselves self-employed contractor or the like, so their employers won't deduct PAYE. If the organisation (as the employer) has control over the work done, and how much and where it is done, the worker is almost certainly an employee and is liable for PAYE. If the organisation does not deduct PAYE when it should, it may be charged penalties. If you are unsure how to tax someone who works for the organisation, please contact the Taxpayer Services section at your local Inland Revenue office.

ACC PREMIUMS

As an employer, you will be required to pay an Accident Compensation Employer Premium. This premium is charged on the total amount of wages paid up to 31 March each year, at a rate that varies according to your organisation's industrial activity and accident record.

From 1st July 1999 workplace accident insurance to employers for their employees' workplace accidents is no longer provided. Instead every employer needs to purchase workplace accident insurance from a registered insurer.

An employers obligations are as follows:

- You must purchase a single accident insurance contract with a registered insurer to cover all your employees' work related injuries.
- Your contract must provide any injured employee with at least the cover and entitlements spelled out in legislation, but may provide more if you wish.
- You must provide your insurance number to an insurer before the contract is effective. This enables compliance to be monitored.
- Neither you nor your insurer will be permitted to cancel the contract without following the process set in law eg
 - you must provide evidence of a new insurance contract or certify that you are no longer required to purchase insurance (eg cease to be an employer).
 - Provide at least 20 but not more than 40 working days notice of termination of a contract and notify the Department of Labour.

- You must make all information about the name of your insurer, claims making process dispute resolution process etc to your employees.
- Premiums are paid to your insurance company and not the Inland Revenue Department.

FRINGE BENEFIT TAX (FBT)

If your charitable organisation provides fringe benefits (perks) to any employees, it must pay Fringe Benefit Tax - currently set at 49 percent of the total value of the benefit.

Some things which are liable for FBT include:

- Private use of an employer-supplied car
- Low interest loans
- Subsidised transport
- Goods or services supplied below market cost (there can be an exemption for this)
- Employer contributions to sickness, accident and death benefits funds.

For example, if an employee has the use of a car while carrying out charitable work for the organisation, any private benefit arising is not subject to FBT. However, if the charitable organisation provides a car as part of a salary package or for use with its business activities, FBT must be charged.

RECORD KEEPING

You have to keep enough records to be able to calculate the income, expenses and GST liability of your charitable organisation, and to enable the Inland Revenue to confirm your accounts if necessary. Some records you must keep are:

- Account book to record receipts and payments
- Bank statements
- Invoices (including GST tax invoices)
- Receipts
- Documents necessary to confirm entries in your accounts.
- Stock take figures for the end of the financial year
- Wage records for all employees
- Interest and dividend payment records
- All records should be kept for 10 years

SMALL BUSINESS TAX INFORMATION SERVICES

Inland Revenue has a Small Business Tax Information services, which aims to provide support and tax education to new small business and organisations. For more information, or if you would like to have an advisory visit, contact the Small Business Tax Information Officer at your local Inland Revenue office.

MAORI COMMUNITY OFFICERS

Maori Community Officers are available at all Inland Revenue offices. Their main aim is to establish and maintain regular liaison between the Tangata Whenua, other

Maori organisation, and Inland Revenue staff, they can be contacted at your local Inland Revenue office to discuss any tax problems.

ANNUAL FINANCIAL STATEMENT

Every society must deliver annually to the registrar a statement containing the following particulars:

- a. The income and expenditure of the society during the last financial year.
- b. The assets and liabilities of the society at the end of the financial year.
- c. All mortgages, charges and securities of any description affecting any of the property of the society at the close of the financial year.

The statement has to be accompanied by a certificate signed by an officer of the society saying the statement has been submitted and approved by the members of the society at a general meeting.

The office of the Registrar of Incorporated Societies recommends

- a. having the accounts audited
- b. having the statements legibly written or typewritten on paper of A4 size using one side of the paper and entitled with the society's full name and the year to which the accounts are applicable.

The registrar also suggests the following documents and records are an aid to good administration:

- a. A minute book
- b. A registrar of members.
- c. A numbered receipt book with retained duplicate copy
- d. A file containing vouchers for all payments
- e. A bank deposit book
- f. A cash receipts and payments journal appropriately ruled
- g. A file containing copies of all reports to members

TAX CONCESSIONS

WHAT IS PECUNIARY GAIN

What is pecuniary gain? No definition is provided in the Act, but usually pecuniary gain is making a profit with the intention of passing this profit on to some or all the members of the society.

It is permissible

- “That the organisation itself makes a pecuniary gain, unless that gain or some part thereof is divided among or received by the members or some of them;
- That the members of the organisation are entitled to divide between them the property of the society on its dissolutions;
- That the organisation is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested,

- provided it does not engage or take part in any such trade, business, industry or calling, or any part or branch thereof;
- That any member of the organisation derives pecuniary gain from the society by way of salary as the servant or officer of the society;
 - That any member of the organisation derives from the society any pecuniary gain to which the member would be equally entitled if not a member of the society;
 - That the member of the organisation compete with each other for trophies or prizes other than money prizes.

APPLYING FOR CHARITABLE STATUS

Special exemptions may be applied for under specific sections of the Income Tax Act 1976.

Sections 61 (25) exempts income derived by trustees in trust for charitable purposes or derived by any society or institution established exclusively for charitable purposes and not for private pecuniary profit of any individual.

Section 58 provides for a special exemption for societies and institutions which is not carried on for private pecuniary profit of any individual and the funds are applied wholly or principally to any charitable, benevolent, philanthropic or cultural purposes within New Zealand.

For an organisation to become a “donee organisation” or an “approved charity” for tax purpose, Inland Revenue must consider and approve an application under the Income Tax Act 1976.

The organisation will need to send to Inland Revenue:

- an up-to-date signed copy of its rules, constitution, trust deed or other founding documents
- a copy of its certificate of incorporation (if incorporated)
- a letter which states the type of exemption (s) requested
- details of how it has been (or will be) operating

If an organisation applying for donee and/or approved charitable status is a local organisation, its local Inland Revenue office can deal with the application. However, if an organisation carries on a business or is a nation wide organisation, a Regional Inland Revenue officer will review the application before it gets final approval.

INLAND REVENUE DEPARTMENT CRITERIA

The organisation’s aims should be clearly set out in its rules or constitution. Some circumstances which would make the aims unacceptable would be:

- clauses which are too vague, general or uncertain to clearly show a charitable aim (eg, “to fulfil social needs”)
- personal benefit provisions as members, trustees or associates

- alteration of rules clause which would allow for changes to charitable purpose, benefits to members and winding up clauses
- purposes limited to New Zealand (applies only to Donee organisations)
- winding up clause which allows funds or assets to be distributed for other than charitable purpose
- business activity of non charitable nature - see IRD rules

TELECOM CONCESSION

Telecom sponsors certain voluntary welfare organisations by providing a reduction of their business line rental and business local call charges to the equivalent of the residential line rental.

To receive this concession an organisation must meet certain minimum criteria that Telecom specifies. One criteria is that the organisation must have charitable status and tax exemption granted by Inland Revenue

If an organisation is applying to Inland Revenue for the specific purpose of meeting Telecom's criteria, it should first make sure it meets all of Telecom's other criteria. You can get Telecom's criteria for Voluntary Welfare Organisation Requesting Telephone Concession from any local Telecom centre.

CHARITABLE STATUS

"Tax legislation encourages charitable purpose in the following ways:

- by allowing a tax rebate or deduction for donations to approved donee organisations,
- by granting income tax and stamp duty exemptions to approved charities, and
- by exempting certain gifts to approved charities from stamp, gift and estate duties.

The word "Act" in this papers, means the Income Tax Act 1976, unless another Act is named.

If you think that Inland revenue has already considered your organisation for charitable status, but you are not sure, check the list of approved organisations at your local Inland Revenue office.

DEFINITION OF 'CHARITABLE PURPOSE'

Under the Charitable Trusts Act 1957

- Supplying the physical wants of sick, destitute, poor or helpless persons and general relief of poverty.
- Education for poor or indigent or their children advancement of education.
- Reformation of offenders, prostitutes, drunkards or drug addicts.
- Employment and care of discharged offenders.
- Provision of religious instruction.
- Support of libraries, reading rooms, lectures and classes of instruction.

- Promotion of sport and recreation.
- Contribution towards losses by fire and other inevitable accidents.
- Encouragement of skill, industry and thrift.
- Rewards of courage.
- repair and maintenance of buildings owned or used for charitable purpose.

GENERAL POLICIES

IMPORTANCE OF POLICIES

Policies are formed as a “commandment” for decision making. They should be subject to much consultation and discussion before implementation. Policies act as a safety-net for an organisation and should be a priority. Policies you may consider:

- **Complaints Procedure** - What avenues are available for staff, volunteers or clients to express concerns or lodge complaints?
- **Safety Policy** - (for staff visiting or being visited by clients)
- **Employment Policy** - acknowledge that the Treaty of Waitangi is New Zealand’s founding document, that the agency is an equal opportunity organisation.
- **Financial Management Policies** - Such as cheque signing
- **Dismissal Policy** - termination of employment
- **Conflict of Interest Policy** for Board Members
- **Sexual and Racial Harassment Policies**
- **Privacy Policy**
- **Health and Safety in Employment**

Your particular organisation may wish to introduce other specific policies.

WHAT ARE POLICIES?

- A governing tool
- a framework

They provide guidelines, and a framework for all sectors of the organisation whether it be volunteers or board members.

Policies should be formed after consultation at all levels, discussion debate and shared experiences. They should be a fundamental tool of the organisation and be held in a “Policy Manual” which is available to all sectors of the organisation.

Policies should not be implemented to react to a current challenge. They should be implemented proactively so that when a challenge arises, they can be referred to for guidance.

The governing body, whether it be the management committee, executive, or board, should formulate policy. The body is responsible for the stewardship of the

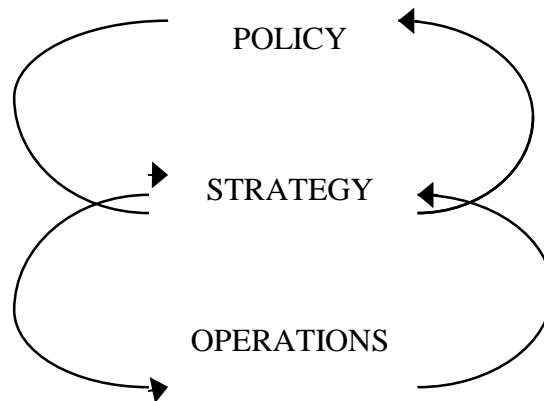
organisation and is responsible for policy formation where the Manager/CEO/Executive officer is responsible for the implementation of the policy.

Policies do not have to be lengthy wordy documents, sometimes a one paragraph statement is sufficient.

WHAT INFORMATION IS NEEDED FOR POLICY FORMATION?

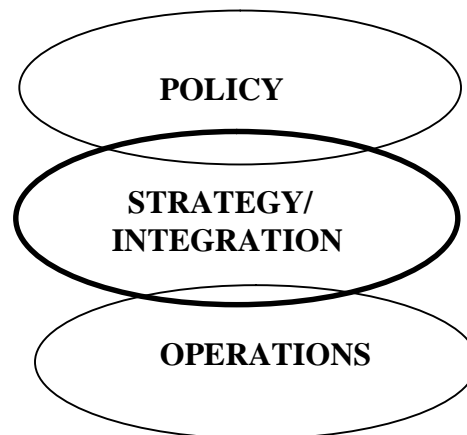
Straddling this divide between the internal and external worlds of an organisation is important and has the following characteristics:

1. A three-level hierarchy of policy/strategy/operations
2. A double loop of learning which allows multiple feedback from information flows, direction-giving, and the monitoring of changes in the external and internal environments
3. A means of processing and integrating these information flows by positioning the direction-givers at the centre of the organisation's learning



→ = downward flow of directions
→ = upward flow of information

Information flows in a learning organisation



WHY HAVE POLICIES? HOW DO WE START THE PROCESS OF POLICY FORMATION?

A voluntary organisation consists of two teams - the policy team led by the Chairperson and the management team led by the senior staff member. Effective co-operation and well-defined working relationships between these two teams are essential.

Decisions need to be made, procrastination and lack of decision-making is one of the worst scourges of community organisations. By agreeing on policies it removes much of that procrastination and dithering and provides the necessary framework within which decisions can be made.

Starting is always the hardest part! Many groups find it easiest for the Board to **draft** a policy and then circulates it throughout the organisation (including volunteers) for comment. A meeting or meetings with staff and volunteers are then held to listen to different comments and suggestions after which the Board finalises the policy. This process may take many months - the more contentious the issue the harder it will be to form policy.

Policies should not be treated lightly and once adopted should not be disregarded therefore it is worth investing time, energy and commitment to the process in order to have a successful outcome. The most successful outcome will be achieved if there has been true consultation and group decision making.

Remember policies often outlive management committees and employees so need to be clear, accessible and relevant.

MINISTRY OF COMMERCE REQUIREMENT AFTER INCORPORATION

The society/Trust must act within its rules. It cannot engage in any activities beyond those set out in the objectives and rules of that society. There is a binding contract between each individual member and the incorporated society/Trust itself to obey the rules of that society in so far as they apply to members.

If there is a disagreement between members as to the meaning or application of the rules, that cannot be resolved by the society, there may be a right to apply to the High Court for a judicial hearing. This is an expensive exercise

A society cannot carry on activities resulting in monetary gain for its members

Should the organisation be found to be engaging in operations beyond the scope of the objects of this society defined in the rules and continue to after notice in writing from the Registrar both the Society and the members are liable to be fined. In addition, any member who is found to be engaging in operations involving pecuniary gain can be

personally fined, and can be personally liable for the debts or obligations incurred by the Society by partaking in such operations.

INSURANCE

Organisations can further protect themselves from risk through Insurance policies. There are a variety of policies available and the advice should be sought from your insurance broker. The main insurance policies required would be:

Public Liability policy – covers damage to the person or property of others but at present ACC covers much of the damage to persons.

Property policy - to protect your property and furnishings against fire, theft or damage.

Professional Indemnity - to protect professional staff and the employer against claims for provision of negligent advice or application of negligent methods of service.

Trustees Liability - to protect trustees or officers from personal liability for their own or fellow trustees actions.

Other policies you may wish to pursue:

- **Mismanagement/wrongful acts in operating an organisation**
- **Directors/Officers and Trustees liability policy – to protect the individual as well as the organisation**
- **Employment Disputes**
- **Products liability**
- **Employee injury**
- **Breach of Statutory Obligations**

FURTHER READING

The Learning Organisation - Bob Garvatt

“Boards at Work” Peter Darracott

Sexual and Racial Harassment Policy Resource Book - NSCSSC PO Box 33 284, Takapuna

CHECKLIST

Now is the time to check whether your organisation is managing their risks prudently.

	YES	NO
Do we have adequate policies in place?	<input type="checkbox"/>	<input type="checkbox"/>
Do we adhere to those policies?	<input type="checkbox"/>	<input type="checkbox"/>
Do we know what is contained in our constitution?	<input type="checkbox"/>	<input type="checkbox"/>
Is it relevant to the organisation today?	<input type="checkbox"/>	<input type="checkbox"/>
Do we follow our constitution?	<input type="checkbox"/>	<input type="checkbox"/>
Does our constitution need changed?	<input type="checkbox"/>	<input type="checkbox"/>
Is the Governance Body aware of its legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>
Do we have adequate insurance?	<input type="checkbox"/>	<input type="checkbox"/>

Do we have a Privacy Officer?

