

## Common Legal questions for Community Groups

### Should your group seek charitable status?

If your group exists for a charitable purpose, you have the option of registering on the Charities Register and obtaining charitable status from Department of Internal Affairs (DIA) Charities. The main consequence of this will be that your group won't be taxed on any income it earns and it will be easier to apply and receive public funding.

You'll have to show that your group's purpose is the relief of poverty, or the advancement of education or religion, or some other purpose that benefits the community, and you'll also have to show that the purpose has a public benefit.

Any kind of organisation can apply for charitable status, whether it's an incorporated society, a trust, a company, or an informal unincorporated group.

For information about registering as a charity and obtaining tax-exempt status, see [here](#).

### What kind of legal structure should your group have?

There are a number of different legally recognised forms that a community group might adopt, such as an incorporated society, a trust, a charitable trust board, or a company. The appropriate structure will depend on your particular organisation, on its purpose, activities, size and so on.

You'll need to decide for example whether it's better for your organisation to become an incorporated body with its own legal identity (such as an incorporated society, a company or a charitable trust board), or whether it should remain unincorporated as an informal membership group or a trust.

For information about the different types of legal structures, and the benefits and limitations of each type, download our comparison chart [here](#).

## **Te Ao Māori within Pākehā legal forms**

The different legal structures explained in this section are ones that are established and regulated by Pākehā law, and this obviously creates restrictions and tensions in relation to Te Ao Māori ways of organising and working. Despite the limitations, organisations can incorporate Te Ao Māori and Te Tiriti based approaches from Te Ao Māori within each of those legal structures.

### **Reflecting Te Tiriti relationships in the governance of your organisation**

Whichever legal form is used, more and more community organisations are choosing approaches to governance that reflect Te Tiriti relationships. These approaches usually involve equal decision-making power for tangata whenua and tangata Tiriti (non-Māori) at the governance level, including co-chairs for the organisation's governing board or committee.

Under the "Two House" model, for example, tangata whenua and tangata Tiriti may engage on issues of common concern by first considering them separately and then coming together to make decisions based on an understanding of the values underlying each group's position.

Relationships are central to Te Tiriti based approaches, so it's useful to discuss and document why these relationships are important to your organisation and how they will work in practice within your organisation – including your processes for making decisions, for communicating and consulting internally, and for resolving disputes.

You can adopt a Te Tiriti relationships approach when you're first setting up your organisation or when you're reviewing and restructuring an existing one. A Tiriti based approach can also be adopted for any of the different legal forms – for example, for an incorporated society or a charitable trust.

For more information about Te Tiriti-based approaches to governance, [see our Te Tiriti section](#).

### **Is Māori-owned land involved?**

If it is (for example, if you plan to use Māori land as a base to provide services to Māori or the wider community), you may need to consider establishing a trust under Te Ture Whenua Act 1993 / the Māori Land Act 1993. There are five types of trust you can establish under the Act – pūtea, whānau, ahu whenua, whenua tōpū and kaitiaki. Each has a different purpose and different needs.

## What other laws will you need to know about?

There's a range of legislation that could affect your organisation and its powers and obligations, depending on its activities and its particular legal form. For example, if you're going to have paid employees, you'll need to comply with the Employment Relations Act 2000 and other employment laws. See our [Staff and Volunteers](#) section for more information.

## Important terms and definitions

**Beneficiary** – “Beneficiaries” are the people or classes of people who are named in the trust deed of a trust as the ones who are to benefit from the trust property.

**Charitable status** – Groups with charitable status do not have to pay tax on income they earn. Decisions about charitable status are made by the Charities Registration Board. A pre-condition for getting charitable status is to register on the Charities Register administered by the Department of Internal Affairs.

**Charitable trust board** – a trust or membership-based group that has a charitable purpose and that has registered and incorporated as a charitable trust board under the Charitable Trusts Act.

**Committee** – a shorthand term often used in the community sector to refer to an organisation's “management committee” (or “executive committee”) or the Board.

**Constitution** – an organisation's governing document, setting out the organisation's purpose and objects and the rules for how it will operate, including for example the powers and duties of its officers. Incorporated societies often use the term “constitution” to refer to their rules, and trusts often use the term to refer to their trust deed. “Constitution” is also the formal legal term used for a company's governing document (when a company has elected to have a constitution).

**Corporate body** – another term for “incorporated body” (see “Incorporated / Incorporation” below).

**Governance** – generally refers to the role of a management committee or separate governing board within a community group in defining the group's purpose, mission and goals, and monitoring whether and how the group is achieving them and complying with applicable laws. The management committee will include the group's principal officers (the chairperson,

treasurer and secretary) and other officers. "Governance" is distinct from the day-to-day management of the group.

**Honorarium** – This is a payment made to a volunteer for their services, usually just a small, token amount. Honorariums are different from reimbursement for a volunteer's expenses.

**Incorporated / incorporation** – A group that is "incorporated" has its own legal identity, separate from its individual members, which means that the group can, for example, enter into contracts and own property in its own name. "Incorporation" means the process of becoming incorporated.

**Incorporated society** – a group of people who have registered and incorporated as a group under the Incorporated Societies Act 1908 so that the group now has a separate legal identity. See incorporated above. Note that a group can incorporate under other Acts, such as the Companies Act 1993.

**Liquidation (or "winding up")** – the process that brings an organisation's activities to an end. The purpose of liquidation is to collect and distribute the organisation's assets.

**Management team** – the body appointed or employed by an organisation to oversee its day-to-day management and follow the policies and strategies set by the governance body.

**Member** – Many community organisations, whether incorporated or unincorporated, are membership-based groups, and "member" may refer to an individual person or an individual incorporated body that belongs to the organisation.

**Not-for-profit** – This chapter generally uses the term "community" to mean the same as "not-for-profit" – as in, for example, "community organisation" or "the community sector".

**Officers** – the people appointed or elected to carry out the central management roles in an organisation, such as a chairperson, secretary, treasurer, director or trustee.

**Rules** – All incorporated societies are required to have a set of rules dealing with issues such as how meetings are to be called and run.

**Trust** – a legally recognised arrangement where the legal title (ownership) to property is held by one or more people (the "trustees") for the benefit of certain people or classes of people (the "beneficiaries") or for a particular charitable purpose.

**Trust deed** – the central document in a trust arrangement, which establishes the trust. The trust deed specifies the trust property, the people who are the trustees, and the people or the purposes that are to benefit from the trust property.

**Trustee** – a person appointed to hold and manage property under a trust deed for the benefit of others (the “beneficiaries”) or for a charitable purpose.