

## 1. FACT SHEET ON GETTING STARTED



*This fact sheet is intended to help organisations decide on a structure that is appropriate for them.*

### IDENTIFYING YOUR GROUP'S NICHE

Most groups start because they have a concern or passion for an issue in the community. They have identified a community need, and perhaps resources have become available to address the issue.

But before going too far with your project, it's important to consider the most appropriate type of structure for your organisation. Will an informal, unincorporated group be sufficient? Or will you need to establish something more formal, such as a formal unincorporated group with detailed rules, or an incorporated society, or a trust? This fact sheet is intended to help you make that decision.

#### Identify the need

Before deciding exactly what type of organisation is appropriate, you should clarify the need for your project.

For example:

- Is it an ongoing commitment or a one-off?
- How much time and effort will be needed?
- How much money will be needed?
- Where will the funding come from?
- How will the project be organised?
- What activities, programmes or services will it offer?
- How will the organisation running the project be managed? For example, will it have board members, paid workers, volunteers?
- What equipment (such as office, phones, computers and vehicles) will be needed?

#### Make a plan

Start by describing your project in writing, detailing its purpose and aims and answering the questions above.

#### Kaupapa, aims and objects

The purpose or kaupapa gives the group its overall goal, and sets out how the group will achieve this goal.

Aims and objects are more specific statements about what the group wants to achieve. These aims and

objects must be lawful. Formulating your aims and objects will help your group decide which structure will work best.

#### Do similar groups already exist?

As part of identifying your group's niche and aims and objects, check whether any similar organisations already exist in the community. If they do, you should investigate whether your group should join the established organisation. There are benefits in doing this:

- An existing group may already be established under a formal structure with aims and objects that are compatible with your group.
- The established group may welcome new, enthusiastic members, to expand their membership and provide a bigger pool of people to help run and manage their organisation.
- It will limit the number of groups with similar aims and objects trying to access limited funding.
- An established group with an existing legal structure (such as an incorporated society) may be prepared to be an umbrella organisation for the new group. This would allow the new group to get on with projects without having to take on the costs and responsibilities of maintaining a formal legal structure.

### DECIDING ON AN ORGANISATIONAL STRUCTURE

#### Membership structure vs trust structure

There are two basic types of organisational structure, and these operate in fundamentally different ways:

- **Organisations with members and a committee** are usually democratically structured and governed. They have a governing body that is accountable to the organisation's membership. The governing body has an overriding obligation to service the organisation's aims and objects.
- **Trusts with trustees or a charitable trust board** operate autocratically. The trustees are not accountable to any membership, however, their

position as trustees will make them accountable to beneficiaries under a trust where dealings with trust property are concerned. The trustees must comply with the obligations that apply at law to all trustees, including applying the trust funds to the trust's objects.

See the table "Characteristics of different legal forms" on p14 of Brochure 2: The legal form of your organisation.

### **How large is the proposed membership of the group?**

Incorporated societies need 15 named members as a minimum.

A charitable society needs at least five members to be incorporated under the Charitable Trusts Act 1957 as a charitable trust board. A charitable trust, if it is incorporated under the Charitable Trusts Act, must have at least two appointed or elected trustees. However, it is better to have three to five trustees rather than the legal minimum of two; otherwise, decision-making can become closed.

Industrial and provident societies must have at least seven members.

### **How flexible should the membership rules be?**

An incorporated society must have rules about how people join or leave the society. These rules can be written to meet the needs of the organisation. If your group intends to begin with a limited number of people involved, but plans to become larger, an incorporated society is likely to be best in the long term.

Charitable societies that have nominated members to be trustees are not greatly affected by turnover in membership because the trustees continue to run the organisation. However, it may not be easy to change trustees. The trust deed for any charitable trust or charitable trust board can set up whatever rules a group wants for appointing trustees, but these must be specific.

### **Who is the group accountable to?**

If the group is accountable to a wide number of people, it may be better to have a broad membership-based legal structure, such as an incorporated society.

Charitable trust boards that are established by a trust deed with trustees (and no ordinary members) are not accountable to a membership in the same way as the managing group of an incorporated society.

### **Who makes important decisions?**

If the group of decision-makers is small, it may be best to set up a charitable trust board. If larger numbers of people are included in decision-making, an incorporated society may be suitable.

### **How will the group's activities be funded?**

Funding is a critical issue for community groups. Consider where the funds will come from to establish and maintain the organisation.

Possible sources include:

- subscriptions from members
- earned income from some form of trading
- grants
- government contracts
- sponsorship.

If your group is incorporated, this will increase the level of funding available from funding agencies.

### **Will your group make a profit?**

If your group is a commercial venture, then consider a profit-based structure such as an industrial and provident society, partnership or company.

Trusts and incorporated societies can make profits, but if they have charitable status or are not-for-profit then the profits cannot go to members.

### **Will the group want to apply for charitable status?**

An organisation will be taxed on income unless it is approved by Inland Revenue as having charitable status. Organisations will first need to register with the Charities Commission as a precondition for obtaining tax-exempt status with Inland Revenue; however, the final decision will remain with Inland Revenue.

Charitable purposes are defined as being for:

- the relief of poverty
- the advancement of education or religion
- any other purposes that benefit the community.

See *Fact sheet 7: Charities Commission and Fact sheet 8: Taxation.*

### Is Māori-owned land involved?

If it is, this could indicate the need to consider establishing a trust under Te Ture Whenua Act 1993/Māori Land Act 1993. The Act promotes keeping lands in the hands of owners, to occupy, develop and use it for whānau, hapū and future generations.

There are five trusts that can be used – pūtea, whānau, ahu whenua, whenua tōpū and kai tiaki. Each has a different purpose and different needs.

## RESOURCES

### Fact sheets

*Fact sheet 2: Unincorporated groups*

*Fact sheet 3: Incorporated societies*

*Fact sheet 4: Trusts and charitable trust boards*

*Fact sheet 5: Relationships between national, branch and local offices*

*Fact sheet 6: Companies and other legal forms*

*Fact sheet 7: Charities Commission*

*Fact sheet 8: Taxation*

### Websites

[www.charities.govt.nz](http://www.charities.govt.nz)

The Charities Commission is responsible for registering charities from 2007 onwards.

[www.community.net.nz](http://www.community.net.nz)

The “How-to Guides” section has a community development resource kit covering all aspects of establishing and running an organisation.

[www.creativenz.govt.nz](http://www.creativenz.govt.nz)

Creative New Zealand has information on effective governance.

[www.dia.govt.nz](http://www.dia.govt.nz)

The Department of Internal Affairs has information about administering lottery grants and community grants schemes.

[www.ird.govt.nz](http://www.ird.govt.nz)

Inland Revenue’s website has information on not-for-profit groups. Download a copy of the brochure *Smart business – An introductory guide for businesses and non-profit organisations* (IR320).

[www.lawaccess.lsa.govt.nz](http://www.lawaccess.lsa.govt.nz)

This website offers a catalogue of law-related information resources, with over 140 New Zealand organisations listing their resources on the site.

[www.lsa.govt.nz](http://www.lsa.govt.nz)

The Legal Services Agency has information on community law centres throughout New Zealand.

[www.societies.govt.nz](http://www.societies.govt.nz)

Societies and Trusts Online provides an information library with forms and fact sheets. It enables incorporated societies to maintain organisational details and provides access to a register of incorporated societies and charitable trusts.

[www.tpk.govt.nz](http://www.tpk.govt.nz)

Te Puni Kōkiri’s website has information on effective governance.

### Publications

Von Dadelszen, M – *Law of Societies in New Zealand* (2000, Wellington, Butterworths)

Von Dadelszen, M – *Members’ Meetings in New Zealand*, 2nd ed (2004, Wellington, LexisNexis)

