

14 June 2024

File Ref: OIA 48399

Tēnā koe [REDACTED]

Official Information Act request

Thank you for your information request dated 25 March 2024. You asked for the following information:

*"I am requesting documents and communications relating to Te Puni Kōkiri and:
Tekau Plus and/or;
Fomana
Between 2008 to 2011."*

We note that on 25 March 2024 you also left the following annotation on the FYI.org.nz website:

"Apologies, I would like to clarify that NZ Bio Forestry is also under the request despite not being listed along with Fomana and Tekau Plus."

On 5 April 2024, we emailed you to seek clarification on the subject matter to which your request relates. You responded on 13 April 2024 to advise:

"Can I please ask for any reports or reviews that mention funding arrangements (including reviews or reports of previous funding) between the aforementioned companies and Te Puni Kōkiri within the timeframe I previously specified?"

On 9 May 2024 you were notified of an extension to the timeframe for the response, to enable time for consultations. I am now in a position to respond.

Your request has been considered in accordance with the Official Information Act 1982 (the Act).

We have interpreted your request as follows:

- "reports" to mean any reports provided to Te Puni Kōkiri from Tekau Plus, Fomana and NZ Bio Forestry, as part of any funding agreements, between 2008 and 2011. We have also included any subsequent reports prepared by Te Puni Kōkiri in response to any reports provided.
- "reviews" to mean any internal/external reviews of any funding agreements with Tekau Plus, Fomana and NZ Bio Forestry, between 2008 and 2011.

No information relating to NZ Bio Forestry has been identified as in scope of your request.

26 documents relating to Tekau Plus and Fomana have been identified in scope of your request. The documents and my decisions with regard to the release of the information are set out in the table attached as Appendix A.

Some information has been withheld in accordance with the Act on the following grounds:

- Section 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- Section 9(2)(h) - to maintain legal professional privilege.

In making the decision to withhold information, we have considered the public interest considerations in section 9(1) of the Act.

I trust my response satisfies your request.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that Te Puni Kōkiri publishes some of its OIA responses on its website, after the response is sent to the requester. The responses published are those that are considered to have a high level of public interest. We will not publish your name, address or contact details.

If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact us at uia@tpk.govt.nz.

Ngā mihi



Paula Rawiri

Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships

Appendix A: Documents - OIA request from [REDACTED] dated 25 March 2024

Item	Date	Document description	Decision
1.	31 May 2008	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Research and Legal Advice – Report 1	Released in full
2.	31 May 2008	SmartFund Monitoring report	Released in full
3.	30 September 2008	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Research Report – Report 2	Released in full
4.	30 September 2008	SmartFund Monitoring report	Released in full
5.	14 October 2008	Tekau Plus – Six monthly report to 30 June 2008	Released in full
6.		Tekau Plus – Quarterly report to 30 September 2008	Released in full
7.		Tekau Plus – Six monthly report to 30 December 2008	Released in full
8.		Tekau Plus – Quarterly report to 30 March 2009	Released in full
9.		Tekau Plus – Six monthly report to 30 June 2009	Released in full
10.		Tekau Plus – Quarterly report to 30 September 2009	Released in full
11.	20 February 2009	SmartFund Monitoring report	Released in full

12.	30 March 2009	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Risk and Audit Report – Report 3	Released in full
13.	1 July 2009	SmartFund Monitoring report	Released in full
14.	31 July 2009	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Case Study Report – Report 4	Released with certain information withheld under section 9(2)(b)(ii).
15.	10 August 2009	Memo: Tekau Plus Contract – Payment Authorisation	Released in full
16.	28 August 2009	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Charities Compliance Model – Report 5	Released in full
17.	28 August 2009	SmartFund Monitoring report	Released in full
18.	24 September 2009	Memo: Tekau Plus – Legal Advice on Investment Agreement	Memo released in full. Attachment withheld in full under section 9(2)(h)
19.	15 December 2009	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme – Training Delivery Report – Report 6	Released in full
20.	15 December 2009	SmartFund Monitoring report	Released in full
21.	18 January 2010	PricewaterhouseCoopers Interim Report on Tekau Pus – Financial Analysis	Released in full
22.	2 February 2010	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme - A training toolkit for Māori charities in the application of the charities compliance model – Report 7	Released with certain information withheld under section 9(2)(b)(ii)

23.	26 February 2010	SmartFund Monitoring report	Released in full
24.	March 2010	Tekau Plus Māori Agribusiness Project Value for Money Review	Released in full
25.	30 March 2010	FOMANA Capital Limited - Charitable Purposes and Tax Compliance Systems Programme - Results of Training Package delivery to Māori Charities Report 8	Released in full
26.	30 March 2010	SmartFund Monitoring report	Released in full

REPORT 1
31 May 2008

Charitable Purposes and Tax Compliance Systems Programme

RESEARCH AND LEGAL ADVICE

Preliminary research on the legal framework affecting Maori charitable entities under the Charities Act 2005 and the Income Tax Act; an outline of the scope and scale of Maori charitable entities affected by the legal framework; and an overview of the generic risks to Maori charitable entities.

Authors: Kim Skelton BA/LLB & Wayne Mulligan Mngt
Reviewers: Peter Doolin LLB & Paul Morgan ExDipBus
Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri
Final:



Table of Content

Purpose.....	3
Scope	3
Format	3
Report Objectives.....	3
Acknowledgements	3
Methodology	4
Diagram 1: Methodology	4
Limitation	4
Disclaimer	4
Outputs	5
Definitions.....	5
Executive Summary	6
Section1: Legal framework affecting Maori charitable entities under the Charities Act 2005 and the Income Tax Act	8
Introduction	8
Section 1: Objective	8
1.1 Introduction	8
1.2 The background and establishment of the Charities Commission	8
1.3 The role of the Charities Commission	9
1.4 The functions and powers of the Commission	9
1.5 Registration requirements/process	10
1.6 Charitable purposes	10
1.7. Consequences of breaching Charitable Purposes Test.....	11
1.8 The obligations of a charitable entity under the Income Tax Act.....	12
1.9. The relationship between the Commission and the Inland Revenue.....	13
1.10 General context and scale of the Charitable Sector in NZ	13
Charities Commission Registration Update.....	14
Section 1 Summary	14
Section 2: Scope and Scale of Maori Charitable Entities	15
Maori Charitable Entities - Types of Entity.....	15
Section 2: Objective.....	15
Maori Entities	15
Preliminary Research findings (as at 20 May 2008)	15
Maori Trust Boards (Maori Trust Boards Act 1955)	16
Marae on Maori reservations (Te Ture Whenua Maori Act 1993)	16
Statutory Maori entities (with charitable purposes).....	17
Mandated Iwi Organisations - MIOs (Maori Fisheries Act)	17
Wholly-Owned Subsidiary Companies	18
Te Kohanga Reo National Trust.....	18
Kura Kaupapa Maori (Education Act 1989)	19
Maori Charitable Trusts.....	19
Maori Societies or Institutions (established for charitable purposes)	20
Maori Land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)	20
Sectors In Which These Entities Operate	21
Section 2 Summary Overall potential scale of Maori Charitable Entities	22
Section 3: Generic Risks.....	23
Section 3: Objective.....	23
Seven Risk Profiles.....	23
Mitigations	24
Section 3 Summary	24
Appendix of Marae (Maori Reservation Sector) registered with Charities Commission as at 20 May 2008	25
Appendix of Kohanga Reo registered with Charities Commission as at 20 May 2008	26
Bibliography and Information Sources	27

Purpose

The purpose of this report is to fulfil requirements of Output 1 in the Investment Agreement ("Agreement") dated 1 May 2008 between Te Puni Kokiri and FOMANA Capital Ltd. Schedule C of that Agreement sets out the reporting requirements for this Report:

Short Term Outcome	Output 1	Due Date
An informed understanding of the scale of affected Māori entities under the Charities Act 2005.	Preliminary research and legal advice obtained.	31 May 2008

Scope

The scope of this report is to provide a high level overview of:

- the legal framework affecting Māori charitable entities under the Charities Act 2005 and the Income Tax Act;
- the scope and scale of Māori charitable entities affected by the legal framework; and
- generic risks to Māori charitable entities.

Format

The report format has four sections plus appendices.

<i>Executive Summary</i>	<i>Summary of key information</i>
<i>Section 1</i>	Legal framework affecting Māori charitable entities under the Charities Act 2005 and the Income Tax Act
<i>Section 2</i>	Scope and scale of Māori charitable entities affected by the legal framework
<i>Section 3</i>	Generic risks to Māori charitable entities

Report Objectives

The objective is to provide an informed understanding of the scale of affected Māori entities under the Charities Act 2005.

Acknowledgements

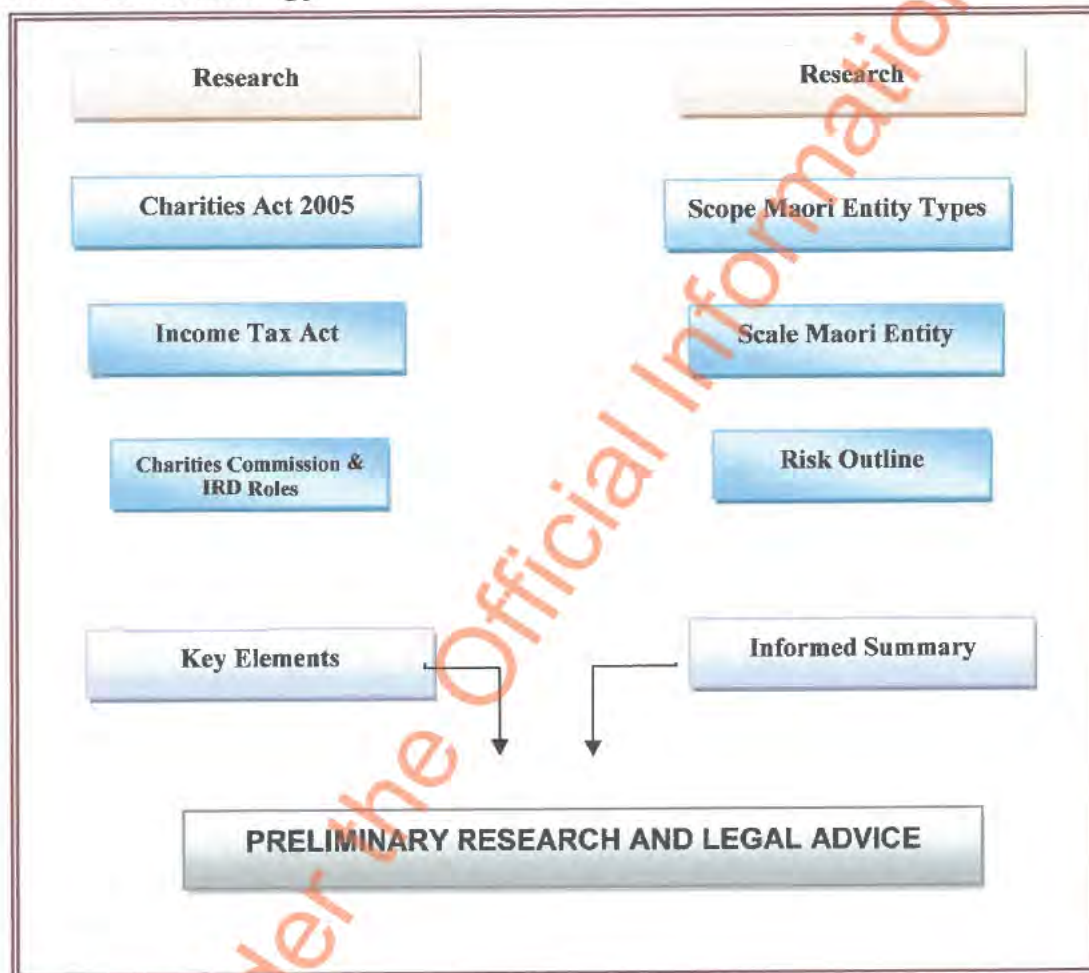
FOMANA would like to acknowledge Te Puni Kokiri for supporting this project. We thank the staff at IRD and also acknowledge the Charities Commission for the meetings held. We truly appreciate the feedback provided by Anne Broughton of the Charities Commission. Finally, we acknowledge the 8 Māori entities that are part of a pilot programme to develop a greater understanding of charitable purposes, which have strategically committing to prepare tax exempt assurance and beneficiary training systems.

Methodology

The methodology has two research aspects.

1. research the Charities Act 2005, Income Tax Act (year) and identify key elements that may affect Māori charities.
2. research the scope and scale of Māori entities that may be affected by Charities Act 2005.

Diagram 1: Methodology



Limitation

This report is limited to providing Te Puni Kokiri an overview and should be seen as the first of the body of knowledge that is being developed over two-years. This report does not provide in any detail the monitoring regime of the Charities Commission, the auditing role of the Inland Revenue Department, or detailed statistics on Māori charitable entities, or any specific risk profiles.

Disclaimer

This report is an overview of the legal framework under the Charities Act and its interface with the Income Tax Acts. It is prepared for Te Puni Kokiri only. It does not purport to provide specific legal advice for any entity on their legal obligations under either legislative enactment, and it should not be relied upon by any entity accordingly.

Outputs

The following table outlines the outputs for this and the next two reports.

Short Term Outcome	Output 2	Due Date
An informed understanding of the scale of affected Māori entities under the Charities Act 2005.	Research reports completed on generic risk for Māori entities with charitable status.	30 Sept 2008
	Output 3	
	Detailed research report completed on the requirements of the new charities and tax compliance framework.	30 Sept 2008
	Output 4	
	Research report and profile completed on each pilot entity outlining areas at risk of compliance with the charities / tax regime.	30 Sept 2008

Definitions

For the purposes of this report, the following working terms and definitions are used:

Māori charitable entities	Legal entities that are registered or eligible for registration with the Charities Commission and which are majority owned by Māori or whose members or beneficiaries, the majority of which are of Māori descent.
---------------------------	--

the Act	Means the Charities Act 2005
---------	------------------------------

the Commission	Means the Charities Commission
----------------	--------------------------------

Executive Summary

- The Charities Commission ("the Commission") was established by the Charities Act 2005 ("the Act"). The Commission came into existence as an Autonomous Crown Entity on 1 July 2005. The establishment of the Commission was a response to the need for increased regulation of the charitable sector through the creation of an independent body.
- The government considers the Act will help build and maintain public trust and confidence in the charitable sector by making more information available about charities. The Commission was established amongst others to do the following to determine, register, provide advice, monitor charities, provide education and support to the charitable sector, encourage good practice in governance and the use of resources in charitable organisations.
- Registration with the Commission is voluntary; from 1 July 2008 an entity must have qualified as charitable, and be registered to be eligible for tax exempt status. That exemption applies to:
 - exemption from income tax for non business income;
 - exemption for business income derived by or in support of charities;
 - exemption from gift duty for persons who make gifts for charity.
- The Inland Revenue will continue to administer the tax exemptions available to charities and decide whether donations to a charity are eligible for rebates and deductions.
- The Commission will decide if an organisation qualifies for registration as a charity.
- A charitable entity must operate within its charitable purposes.
- The Commission uses the well established common law test for charitable purposes.
- According to that test the rules of an organisation must clearly state that its purposes are for one of the following:
 - relief of poverty.
 - advancement of education.
 - advancement of religion.
 - any other matters that is beneficial to the community.
- A charitable entity can be in breach of its empowering documents by making dispositions of funds held by it in the following ways:
 - by applying the funds to a purpose outside the charitable purposes stated in the empowering documents.
 - by applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients.
- The consequences of such a breach could include the following:
 - the Commission may take enforcement proceedings against the officers of the entity;
 - the Commission may deregister the entity;
 - the Inland Revenue if it detects an ultra vires transaction must report it to the Minister of Revenue;
 - if the breach involves a trust there is the risk of legal action against the trustees by the Attorney General;
 - adverse publicity against the officers of the entity.
- The Inland Revenue can seek to impose taxes on the amounts of income misapplied.

- If charitable status was lost then tax would be applied at the rate of 33% / 39% plus recovery of penalties and interest.
- The scope of Māori entities that are impacted by the Charities Act 2005 is wide ranging.
- The potential impact because of non-compliance, limited or no systems in place to illustrate compliance with charitable purposes raises significant risks. The following types of entities (structures) have been identified.
 - Māori Trust Boards (Maori Trust Boards Act 1955);
 - Marae on Māori reservations (Te Ture Whenua Māori Act 1993);
 - Statutory Maori entities (with charitable purposes);
 - Mandated Iwi Organizations - MIOs (Māori Fisheries Act);
 - Fisheries Asset Holding Companies (Māori Fisheries Act);
 - Te Kohanga Reo National Trust (and affiliated Kohanga Reo);
 - Kura Kaupapa Māori (Education Act 1989);
 - Māori Charitable Trusts;
 - Māori societies or institutions (established for charitable purposes);
 - Te Ture Whenua Trusts and community purposes Trusts (MLC).
 - Marae - not a Māori reservation;
 - Subsidiary Companies to asset holding companies (refer Māori Fisheries Act 2004);
 - Māori Societies or Institutions (companies) established for charitable purposes;
 - Māori Land Trusts and Maori Incorporations (Te Ture Whenua Maori 1993). Where it includes trusts to spend for: Māori community purposes - as defined in Te Ture Whenua Māori 1993. Example of types: Ahu Whenua Trust; Whenua Topu Trust; Kaitiaki Trust; Whanau Trust; Putea Trust.
 - Māori Associations (Māori Community Development Act 1962);
 - Waka Umanga.
- Initial research illustrates seven risk profiles.
 - operating outside "charitable purposes" as per Trust Deed or Rules;
 - misappropriation of Trust funds;
 - misapplication of Trust funds;
 - penalties applied by IRD for failure to comply with charitable purposes;
 - de-registration by the Charities Commission;
 - loss of tax exemption status;
 - loss of reputation.
- Mitigations first requires an in-depth understanding of the obligations of charitable purposes (tax exemption) and then up-skilling Māori entities through the provision of information, policies, training and systems to reduce the likelihood of non-compliance.
- The taxation issue is really about the risk to Māori charities of losing their tax exempt status through failure to operate according to their "charitable purposes". In the worst case, loss of tax exemption status will see many Māori charities face insolvency through massive tax bills, possibly back-dated with penalties applied by IRD.

Section 1: Legal framework affecting Maori charitable entities under the Charities Act 2005 and the Income Tax Act

Introduction

Section 1: examines the following:

- Establishment of the Charities Commission;
- Charities Commission role;
- Charities Commission functions/powers;
- Charitable purposes test;
- Consequences of breaching the charitable purposes test;
- Obligations of a charitable entity under the Income Tax Act;
- The interrelationship between the IRD and the Charities Commission in relation to charitable entities.

Section 1: Objective

The objective of this section is to provide the background and to summarise key elements such as roles, functions, relationships and obligations of the Charities Commission and the Charitable Purposes Test.

1.1 Introduction

This section of the paper shall examine the following factors:

- the background to and rationale for the establishment of the Charities Commission;
- the role of the Charities Commission;
- the functions/powers of the Charities Commission;
- the charitable purposes test;
- the consequences of breaching the charitable purposes test;
- the obligations of a charitable entity under the Income Tax Act;
- the interrelationship between the IRD and the Charities Commission in relation to charitable entities.
- the scope and extent of the charities sector in New Zealand.

1.2 The background and establishment of the Charities Commission

The Charities Commission ("the Commission") was established by the Charities Act 2005 ("the Act"). The Commission came into existence as an Autonomous Crown Entity on 1 July 2005. The establishment of the Commission was a response to the need for increased regulation of the charitable sector through the creation of an independent body. The government considers the Act will help build and maintain public trust and confidence in the charitable sector by making more information available about charities.

1.3 The role of the Charities Commission

The Commission was established to do the following:

- to determine the charitable status of charities (entities);
- to register and monitor charities that wish to keep or obtain tax exempt status;
- to provide education and support to the charitable sector;
- to promote trust in charitable organisations;
- to encourage good practice in governance and the use of resources in charitable organisations;
- to provide advice on matters relating to charities to the Government;
- to promote and to undertake research into matters relating to charities.

Whilst registration with the Commission is voluntary, from 1 July 2008 an entity must have qualified as charitable, and be registered to be eligible for tax exempt status. That exemption applies to:

- exemption from income tax for non business income;
- exemption for business income derived by or in support of charities;
- exemption from gift duty for persons who make gifts for charity.

The Inland Revenue will continue to administer the tax exemptions available to charities and decide whether donations to a charity are eligible for rebates and deductions. The Commission will decide if an organisation qualifies for registration as a charity. It will examine whether an organisation has charitable purposes and whether the organisations name and officers meet the requirements of the Act. It is understood that the IRD will accept the Commission's decision so that registration can in most cases lead to tax exemption.

1.4 The functions and powers of the Commission

The functions and powers of the Commission, as set out in section 10 of the Act, are to:

- promote public trust and confidence in the charitable sector;
- encourage and promote the effective use of charitable resources;
- educate and assist charities in relation to matters of good governance and management;
- make appropriate information available to assist persons to make registration applications under the Act;
- receive, consider and process applications for registration as charitable entities;
- ensure that the Register of Charitable Entities is compiled and maintained;
- receive, consider, and process annual returns submitted by charitable entities;
- supply information and documents in appropriate circumstances for the purposes of the Inland Revenue Acts;
- monitor charitable entities and their activities to ensure that entities that are registered as charitable entities continue to be qualified for registration as charitable entities;
- inquire into charitable entities and into persons who have engaged in, or are engaging in, conduct that constitutes, or may constitute, a breach of the Act or serious wrongdoing in connection with a charitable entity;

- monitor and promote compliance with the Act, including by taking prosecutions for offences against the Act in appropriate circumstances;
- consider, and to report and make recommendations on, any matter relating to charities;
- stimulate and promote research into any matter relating to charities.

1.5 Registration requirements/process

An organisation can register with the Commission if:

- it is established for charitable purposes;
- it is not for the private profit of any individual or group;
- it has a name that complies with the Act;
- all the officers of the organisation are qualified to be officers under the Act.

To register organisations have to:

- complete the prescribed application form, which includes information about their current and proposed charitable activities;
- submit a copy of their rules ,constitution, trust document or similar;
- certify the officers of the organisation by completing a prescribed officer form.

For existing entities that application must be with the Commission by 1 July 2008.

1.6 Charitable purposes

Section 5(1) of the Act defines a charitable purpose as the following:

"includes every charitable purpose whether it relates to the relief of poverty, the advancement of religion, or any other matter beneficial to the community"

A charitable entity must operate within its charitable purposes. The Commission uses the well established common law test for charitable purposes.

According to that test the rules of an organisation must clearly state that its purposes are for one of the following:

- relief of poverty. Examples include caring for the aged, children, orphans, the infirm, blind, war veterans, disabled, discharged prisoners, alcoholics, providing accommodation for the elderly, helping other needy people.
- advancement of education. Examples include providing education through early childhood centres, schools, and universities, scholarship for academic achievement founding and supporting schools technical college and universities, providing museums and libraries, delivering vocational training.
- advancement of religion. Examples include celebrating religious services in public, providing and maintaining grounds and buildings to be used by religious organisations, maintaining burial grounds, providing religious education;
- any other matters that is beneficial to the community.

To be charitable under this category an entities purpose must be:

- very similar to the spirit and intent of the purposes listed in the Statute of Elizabeth or very similar to the charitable purpose listed by the courts;
- be beneficial to the community.

The courts have found the following purposes to be beneficial to the community:

- promoting public health;
- providing public works and services;
- providing public amenities and recreational facilities
- protecting the environment;
- protecting human life;
- preventing cruelty to and protecting the welfare of animals;
- facilitating social rehabilitation¹.

In addition its purpose must not be aimed at creating private financial profit. Section 5 (3) of the Act states that an organisation can have a secondary or supplementary non charitable function as part of its charitable purpose. That non charitable purpose must be:

- ancillary, secondary, subordinate, or incidental to a charitable purpose of the entity;
- not be an independent purpose of the entity.

The Commission have stated they will compare the charitable objects of each entity against those stated in Section 5(1) of the Act and assess each application on a case by case basis. The definition of charitable purposes contained in the Act is different from other legislation such as the Charitable Trusts Act 1957. Notwithstanding these differences the Charitable Trusts Act (and other related legislation) will continue to apply to those entities registered under the Act.

1.7. Consequences of breaching Charitable Purposes Test

A charitable entity can be in breach of its empowering documents by making dispositions of funds held by it in the following ways:

- By applying the funds to a purpose outside the charitable purposes stated in the empowering documents. This action is said to be ultra vires or outside of the rules. This is known as a Purpose Risk.
- By applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients. This is known as a Misapplication Risk.

The consequences of such a breach could include the following:

- The Commission may take enforcement proceedings against the officers of the entity;
- The Commission may deregister the entity;
- The Inland Revenue if it detects an ultra vires transaction must report it to the Minister of Revenue;

¹ Refer to Latimer v Commissioner of Inland Revenue [2002] 3 NZLR 195 for outline of implications as it relates to charitable purpose and Maori, and wider public benefit.

- If the breach involves a trust there is the risk of legal action against the trustees by the Attorney General;
- Adverse publicity against the officers of the entity;
- The Inland Revenue can seek to impose taxes on the amounts of income misapplied. If charitable status was lost then tax would be applied at the rate of 33% /39% plus recovery of penalties and interest.

The establishment of the Commission raises the risk to charitable entities of the following:

- It raises the risk of ultra vires transactions been detected. The Commission is specifically charged with monitoring the ongoing performance of charitable entities;
- It is considered that the Inland Revenue will be more likely to undergo periodic audits;
- The untested nature of the Act and how the Commission will determine serious wrong doing.

1.8 The obligations of a charitable entity under the Income Tax Act

Income tax exemptions are available to trusts, societies and institutions that meet the requirements of the Income Tax Act 2004 in terms of deriving income for charitable purposes. Exemptions from income tax are provided for under section CW 34 (non-business income) and CW 35 (business income) of the Income Tax Act 2004. Under the self assessment regime an organisation must assess for itself whether these income tax exemptions apply to it. Although taxpayers are required to self assess their tax obligations, the practice has been that charities have sought the opinion of the Commissioner of Inland Revenue on their tax status.

In brief, Inland Revenue's operational practice will be:

- entities with non-business income that are registered with the Commission will prima facie qualify for the income tax exemption in respect of that income;
- for entities that derive business income, registration alone will not be sufficient for the business income tax exemption and they must self assess the extent to which their charitable purposes are carried out in New Zealand;
- entities that currently enjoy income tax exemption must register with the Commission by 1 July 2008. Failure to do so will result in the loss of their tax exempt status until they are subsequently registered;
- entities currently listed as donee organisations will continue to enjoy donee status even though they may decide not to register with the Commission;
- newly registered charities will generally not need to make separate application to Inland Revenue for donee status;
- organisations that choose not to become registered charitable entities may still apply to Inland Revenue for approval as donee organisations;
- during the transitional period (from 1 February 2007 to 30 June 2008) charities will retain their existing tax exempt status for income tax, gift duty and resident withholding tax;
- the exemption from gift duty for gifts to charitable trusts, societies and institutions will cease from 1 July 2008 where the entities have not registered with the Commission;
- from 1 July 2008 Inland Revenue will not issue certificates of exemption from resident withholding tax to charitable entities unless they are registered with the Commission;
- charitable organisations are still required to have IRD numbers;

- after 30 June 2008 Inland Revenue will attempt to contact charitable organisations that records show have an exemption from income tax, and have not registered with the Commission, to determine their position; and
- in the past Inland Revenue has suggested there be restrictions in their rules preventing entities from altering certain clauses without prior approval.
- Inland Revenue strongly recommends that organisations remove any requirement in their rules for Inland Revenue to consent to rule changes.

1.9. The relationship between the Commission and the Inland Revenue

Inland Revenue will remain responsible for administering the Revenue Acts and will retain the right to audit charities to ensure they continue to be eligible for tax exemptions. Inland Revenue also remains responsible for assessing the donee status of donations to a charity eligible for rebates and deductions.

Charities registered under the Act are generally eligible for exemptions from income tax on some or all of their income. Once registered they will receive information from the Inland Revenue outlining the exemptions that they are entitled to and what they have to do to comply with requirements for the exemptions.

1.10 General context and scale of the Charitable Sector in NZ

Charitable Sector (page 7): The number of charities in New Zealand is unknown. The recent Counting Non-profit Institutions in New Zealand study released by Statistics New Zealand reported that there were 97,000 non-profit institutions operating in New Zealand in October 2005. However, not all charities were included in that study, with trusts, in particular, excluded.

The Commission knows that there are a large number of trusts in New Zealand. The Commission, when planning for registration, considered the available information and budgeted for 25,000 charities. Given Statistics New Zealand's study that estimate may be light.

As well as having little information on the numbers of charities in New Zealand, knowledge about their financial impacts is also sparse.

Output Class Charities Administration (page 21): It is unknown how many charities will apply to register under the Charities Act, but projections have used a base volume of 25,000 new applications and associated annual returns.

Performance Measures for 2007/08 ²	Standard/Target
Number of charities registered	Up to 18,000

² See Charities Commission Statement of Intent.

Charities Commission Registration Update

Date	Number registered	Processing Time
25 January 2008	2,142	currently reviewing applications received from 29 August.
Feb 2008	3,121	reviewing applications received from early November 2007
29 April 2008 ³	4,990	reviewing applications received from 30 January 2008.
19 May 2008	5,902	Currently making initial reviews of applications received from 26 Feb 08.

Section 1 Summary

The data about charities in NZ is evolving. There could be as many as 100,000 charitable entities.

The Commission's target is to register 18,000 in 2007/2008 but as at 15 May 2008 the Commission had received 11,000 and only registered approximately 5,000 leaving a staggering backlog.

Preliminary Research Findings:

- there is little information on the charitable sector and its size and scope is uncertain;
- all stakeholders in the charitable sector, including the general public, would benefit from the availability of good data on the charitable sector;
- there are opportunities for government agencies to work in partnership with the charitable sector to establish and develop services and promote community development;
- the Commission has a role to educate and assist charities, however, it may be prudent to explore ways by which non-government, including Maori can best add value in educating segments of the community;
- it is highly likely that charities will come under increasing pressure to improve efficiency and accountability, particularly when accessing and accounting for government funding;
- there is a need to coordinate activities between government agencies working with the sector to ensure compliance costs are minimised, and clarify and communicate roles and boundaries to avoid confusion;
- there seems to be a low level of Maori entities that have registered at the time of preparing this report.

³ Update 29 - April 2008

Section 2: Scope and Scale of Maori Charitable Entities

Maori Charitable Entities - Types of Entity

Section 2 has identified numerous types of Maori charitable entities and we have commented specifically on ten. Furthermore we have identified at least twenty one possible sectors.

Section 2: Objective

The objective of this section is to provide an outline of the breadth and depth of Maori entities that could be impacted on by the Charities Act 2005.

Maori Entities

FOMANA has provided a brief commentary on the following ten entities (over page).

1. Maori Trust Boards (Maori Trust Boards Act 1955);
2. Marae on Maori reservations (Te Ture Whenua Maori Act 1993);
3. Statutory Maori entities (with charitable purposes);
4. Mandated Iwi Organizations - MIOs (Maori Fisheries Act);
5. Fisheries Asset Holding Companies (Maori Fisheries Act);
6. Te Kohanga Reo National Trust (and affiliated Kohanga Reo);
7. Kura Kaupapa Maori (Education Act 1989);
8. Maori Charitable Trusts;
9. Maori societies or institutions (established for charitable purposes);
10. Te Ture Whenua Trusts and community purposes Trusts (MLC).

The following entities could also have charitable purposes and therefore be impacted by the Charities Act 2005.

- Marae - not a Maori reservation;
- Subsidiary Companies to asset holding companies (refer Maori Fisheries Act 2004);
- Maori Societies or Institutions (companies) established for charitable purposes;
- Maori Land Trusts and Maori Incorporations (Te Ture Whenua Maori 1993). Where it includes trusts to spend for: Maori community purposes - as defined in Te Ture Whenua Maori 1993. Example of types: Ahu Whenua Trust; Whenua Topu Trust; Kaitiaki Trust; Whanau Trust; Putea Trust.
- Maori Associations (Maori Community Development Act 1962);
- Waka Umanga

Preliminary Research findings (as at 20 May 2008)

Our research provides a brief commentary on the ten types of Maori entities that could be impacted by the Charities Commission Act 2005.

Maori Trust Boards (Maori Trust Boards Act 1955)

Type 1	Maori Trust Board (Maori Trust Boards Act 1955)
Note on charitable status	Boards that have executed a declaration of trust declaring property to be held for charitable purposes, subject to declaration being approved by IRD
Potential Scale	9 current boards
Number registered with Charities Commission	one known: Tuwharetoa Maori Trust Board Registered Date 09/04/2008 Registration number CC22722

Marae on Maori reservations (Te Ture Whenua Maori Act 1993)

Type 2	Marae on Maori reservations (Te Ture Whenua Maori Act 1993)
Note on charitable status	Includes marae situated on Maori reservations where funds used only to administer and maintain marae for charitable purposes.
Potential Scale	683 Marae listed on Maori.org.nz website ⁴ Unknown how many of these are situated on Maori reservations
Number registered with Charities Commission	24 Marae registered (with Marae in name of entity) Only 17 of these listed as being in Maori reservation sector (See Appendix)

⁴ http://whakapapa.maori.org.nz/email_marae_rohe.asp

Statutory Maori entities (with charitable purposes)

Type 3	Statutory Maori entities (with charitable purposes)
Note on charitable status	<p>Partial tax exemption status for:</p> <ul style="list-style-type: none"> • Te Runanga o Ngai Tahu Act 1996 • Te Runanga o Ngati Awa 2004 <p>Statutory Charitable Trusts:</p> <ul style="list-style-type: none"> • Ngati Rarua Te Atiawa Trust
Potential Scale	Estimate is 10 - 20 but could increase if future Treaty settlement legislation allows for establishment of charitable entities alongside commercial entities
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

Mandated Iwi Organisations – MIOs (Maori Fisheries Act)

Type 4	Mandated Iwi Organisations - MIOs (Maori Fisheries Act)
Note on charitable status	Approval of MIO constitutional documents with charitable purposes by Te Ohu Kaimoana
Potential Scale	43 with MIO status out of 56 iwi at Aug 07 ⁵
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

⁵ <http://teohu.maori.nz/iwiregister/overview>

Wholly-Owned Subsidiary Companies

Type 5 Wholly-owned Subsidiary Companies
(eg. Asset Holding Companies under Maori Fisheries Act - eg. Wholly owned subsidiaries of Ngati Awa)

Note on charitable status Wholly owned companies of Mandated Iwi Organisations for Fisheries Settlement purposes may be registered as charitable entities if parent organization (MIO) is charitable.

Potential Scale 43 with MIO status out of 56 iwi at Aug 07⁶ assumption of same number of asset holding companies. Unknown how many other wholly owned subsidiaries of charitable parent entity.

Number registered with Charities Commission

Te Kohanga Reo National Trust

Type 6 Te Kohanga Reo National Trust (& affiliate Kohanga Reo)

Note on charitable status Te Kohanga Reo National Trust has charitable status for non-business and business activities, income tax exemption, and also has donee status. This means that Kohanga reo affiliated under the tutohinga (charter) are not required to file income tax returns.

Potential Scale 501 licensed Kohanga as at July 2005⁷

Number registered with Charities Commission National Trust registered and 19 other Kohanga Reo registered as at 20 May 2008. (See Appendix)

⁶ <http://teohu.maori.nz/iwiregister/overview>

⁷ <http://educationcounts.edcentre.govt.nz/statistics/downloads/Web%20Time-Series%20-%20Licensed%20ECE%202005.xls>

Kura Kaupapa Maori (Education Act 1989)

Type 7	Kura Kaupapa Maori (Education Act 1989)
Note on charitable status	<ul style="list-style-type: none"> Kura kaupapa are classified as centres bound by the Education Act 1989 and its constitution. Under this Act, Kura kaupapa are exempt from income tax, but may have to pay other taxes. State and state integrated schools are exempt from income tax under the Education Act (Schedule 6, clause 2). State and state integrated schools <i>do not</i> need to register with the Charities Commission to remain exempt from income tax for school operations.
Potential Scale	66 Kura Kaupapa as at July 2006 ⁸
Number registered with Charities Commission	Need to confirm that Kura Kaupapa do not need to register.

Note: The Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Bill 2008 provides that tertiary education institutions and state and state integrated schools need not register with the Charities Commission.

Maori Charitable Trusts

Type 8	Maori Charitable Trusts
Note on charitable status	<p>National, Regional or local Māori, Iwi, Hapu, or whanau entities established as Charitable Trusts:</p> <ul style="list-style-type: none"> He Oranga Pounamu Charitable Trust
Potential Scale	<p>Probably the largest group of Maori charitable entity and will cover wide range of sectors, particularly health and education.</p> <p>Likely to number well above 500 and may be closer to 1000.</p> <p>Within Health alone, there are 240 Maori Health providers listed on Min of Health website as at 20 May 2008 and a number of separate Maori PHOs that are also charitable.</p>
Number registered with Charities Commission	<p>Unknown and difficult to tell from Search of Register</p> <p>Needs further research</p>

⁸ <http://educationcounts.edcentre.govt.nz/statistics/schooling/maori-medium-education-at-july06.html>

Maori Societies or Institutions (established for charitable purposes)

Type 9	Maori societies or institutions (established for charitable purposes)
Note on charitable status	For example National or pan- Māori entities (and affiliate members) <ul style="list-style-type: none"> Maori Women's Welfare League Inc.
Potential Scale	Potentially hundreds
Number registered with Charities Commission	Unknown and difficult to tell from Search of Register Needs further research

Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)

Type 10	Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)
Note on charitable status	Charities Commission may be able to register trusts established under <i>Te Ture Whenua Māori Act 1993 (Māori Land Act 1993)</i> if they can clearly show they have a charitable purpose. An order of the Māori Land Court won't be automatically accepted as proof of charitable purpose under the Charities Act. The Commission will review the terms of the order and the trust deed in relation to the definition of "charitable purpose" in the Charities Act and assess every organisation's application on a case-by-case basis to decide whether it has a charitable purpose.
Potential Scale	Unknown and difficult to tell from Search of Register Needs further research using Maori Land Court records and Charities Commission data
Number registered with Charities Commission	Example of Ahuwhenua Trust East Taupo Lands Trust Charitable Trust ⁹ Registered Date 08/05/2008: Registration number CC24040

⁹ [East Taupo Lands Trust Charitable Trust](#)

Sectors In Which These Entities Operate

The following sectors are those used by the Charities Commission in its Application Form 1 and in its online Register. Examples of Maori charitable entities have been identified to illustrate the breadth of sectors in which these entities operate. Further research to obtain quantitative data to enable a fuller understanding of the sectors in which Maori charitable entities operate will assist in identifying potential risk areas and compliance issues.

Sector	Example of Maori charitable entity registered with Charities Commission	(Registration No)
1. Accommodation / housing	Ngati Pahauwera Kaumatua Trust	CC22209
2. Education / training / research	<ul style="list-style-type: none"> Southern Maori Development Charitable Trust 	CC10999
3. Kohanga Reo	<ul style="list-style-type: none"> Hineteiwaiwa Te Kohanga Reo 	CC23106
4. Health	Te Kahui Hauora O Ngati Koata Trust	CC21237
5. Environment / conservation	Wai Care Environmental Consultants Whangaroa	CC24478
6. Marae on reservation land	Otenuku Marae Maori Reservation	CC21086
7. Community development	Ngati Mutunga Community Development Charitable Trust	CC23076
8. Emergency / disaster relief		
9. Social services	He Matapuna Ora Charitable Trust Board	CC22962
10. Employment		
11. Religious activities	Kei Runga I Nga Parirau O Te Ekara	CC20680
12. Arts / culture / heritage		
13. Sport / recreation	Te Hua Rangatahi Trust	CC23675
14. Care / protection of animals		
15. International activities		
Sector	Example of Maori charitable entity registered with Charities Commission	(Registration No)
16. Economic development	Ngati Kahu Corporate Ltd	CC11424

17. Fund-raising

18. Disability

19. Promotion of volunteering

[Mauri Tu Mauri Ora Charitable Trust Board](#)

CC20091

20. Providing funding to the ultimate parent entity for application to charitable purposes

[Ngati Awa Fish Quota Holdings Limited](#)

CC11026-4

21. 20. (Sec 24 & Sec 24A of the Maori Trust Boards Act 1955 & Sec 6 of the Te Runanga o Ngati Whatua Act 1988 state the objects and purposes of the Trust which encompasses all of those items ticked in box 14)

[Te Runanga o Ngati Whatua](#)

CC23982

part of [Te Runanga O Ngati Whatua Group](#) comprising:

Charity Name

Te Runanga o Ngati Whatua

Te Topu Ika o Ngati Whatua

Ngati Whatua Fisheries Limited

Section 2 Summary Overall potential scale of Maori Charitable Entities

There appears to be a low incidence of registrations by Maori Charitable Entities. This research shows that the scope and scale of Maori entities affected by the Act is potentially significant. There are at least ten entity types and a potentially over twenty sectors in which Maori are or could be involved in charitable purposes.

Maori Trust Boards (Maori Trust Boards Act 1955)	9
Marae on Maori reservations (Te Ture Whenua Maori Act 1993)	400
Statutory Maori entities (with charitable purposes)	20
Mandated Iwi Organisations - MIOs (Maori Fisheries Act)	50
Wholly-owned Subsidiary Companies eg. AHCs (Maori Fisheries Act)	80
Te Kohanga Reo National Trust (and affiliated Kohanga Reo)	500
Kura Kaupapa Maori (Education Act 1989)	60
Maori Charitable Trusts	700
Maori societies or institutions (established for charitable purposes)	600
Maori land Trusts (Maori Affairs Act 1955 and Te Ture Whenua Maori Act 1993)	100

Approx 2,519

Section 3: Generic Risks

Section 3: Objective

The objective of this section is to provide an outline of the potential risks.

Seven Risk Profiles

We have identified seven risk profiles. These are:

1. operating outside “charitable purposes” as per Trust Deed or Rules
 - a. ultra vires placing enormous risk on trustees and the trust.
2. misappropriation of Trust funds
 - a. applying the funds for purposes which were not approved and do not benefit the organisation. This would amount to criminal activity
3. misapplication of Trust funds
 - a. applying funds for other purposes (which may benefit the members) but are not applied as approved. This could result in the trustees being in breach of the trust deed.
4. penalties applied by IRD for failure to comply with charitable purposes
 - a. financial penalty -may require back payment and interest.
5. de-registration by the Charities Commission
 - a. removal from the charitable register
6. loss of tax exemption status
 - a. loss of tax exemption
7. loss of reputation
 - a. public odium

Mitigations

- reducing liabilities by providing trustees and leaders of Māori entities with an in-depth understanding of their obligations in relation to the charitable purposes and preservation of charitable status for tax compliance.
- Up-skilling Māori entities through the provision of information, policies and training at two levels, firstly for key members in their entity and secondly for beneficiaries.
- developing systems to reduce the likelihood of non-compliance in IRD audit investigation.
- improving the quality of data and standards for compliance.

Section 3 Summary

- The taxation issue is really about the risk to Maori charities of losing their tax exempt status through failure to operate according to their “charitable purposes”.
- The risk of losing an existing tax exemption status is very high if there is only a minimal understanding of what constitutes “charitable purposes”.
- In the worst case, loss of tax exemption status will see many Maori charities face insolvency through massive tax bills, possibly back-dated with penalties applied by IRD.
- In other cases, loss of tax exemption status will reduce the income to such an extent that the Maori charity will be unable to continue to provide the services it currently delivers.
- In all cases, loss of tax exemption status will cause reputational damage to the Maori charity, adverse media attention, and loss of goodwill and potential income from donee or grant organisations.
- The legislative framework affecting Maori charities encompasses compliance with the provisions of a number of Acts including:
 - Charities Act 2005;
 - Charitable Trusts Act 1957;
 - Trustee Act 1956;
 - Incorporated Societies Act 1908;
 - Companies Act 1993;
 - Income Tax Act 2004;
 - Te Ture Whenua Maori Act 1993;
 - Waka Umanga Act (currently before government).

Appendix of Marae (Maori Reservation Sector) registered with Charities Commission as at 20 May 2008

Using search on word "Marae"

Charity Name	Registration		
	Number	Status	Date
1. Arohanui Ki Te Tangata Marae	CC24453	Registered	16/05/2008
2. Kaiuku Marae	CC11069	Registered	11/09/2007
3. Karangahape Marae Association Incorporated	CC22287	Registered	31/03/2008
4. Karangahape Marae Trust	CC21720	Registered	12/03/2008
5. Mangaiti Marae Trust	CC23740	Registered	02/05/2008
6. Maungarongo Marae Trustees	CC24565	Registered	20/05/2008
7. Ngai Tupoto Marae Trustees	CC20190	Registered	06/12/2007
8. Ngatiwai O Aotea Kawa Marae Trust	CC22867	Registered	11/04/2008
9. Ngunguru Marae	CC20877	Registered	01/02/2008
10. Otenuku Marae Maori Reservation	CC21086	Registered	13/02/2008
11. Rangiahua Marae	CC22796	Registered	10/04/2008
12. Taiharuru Marae Incorporated	CC21686	Registered	11/03/2008
13. Taihoa Marae	CC21681	Registered	11/03/2008
14. Te Maata Marae Trust	CC20193	Registered	06/12/2007
15. Waiaua Marae Trust	CC20210	Registered	10/12/2007
16. Whaakirangi Marae	CC22960	Registered	15/04/2008
17. Whakamarama Marae Society Incorporated	CC20997	Registered	08/02/2008

Appendix of Kohanga Reo registered with Charities Commission as at 20 May 2008

Using search on word "Kohanga Reo"

Charity Name	Registration		
	Number	Status	Date
1. Hineteiwaiwa Te Kohanga Reo	CC23106	Registered	17/04/2008
2. Ki Ohau Kohanga Reo	CC23098	Registered	17/04/2008
3. Kia Tau Te Rangimarie Te Kohanga Reo	CC23460	Registered	28/04/2008
4. Nga Tau E Toru Te Kohanga Reo	CC23762	Registered	02/05/2008
5. Nga Tikanga Pono Kohanga Reo Society Incorporated	CC23034	Registered	16/04/2008
6. Takaputiraha Kohanga Reo	CC23223	Registered	21/04/2008
7. Tarimano Kohanga Reo	CC23178	Registered	18/04/2008
8. Te Hau Ora Kohanga Reo Trust	CC24507	Registered	19/05/2008
9. Te Kohanga Reo Atawhai O Te Ahu - Turanga-I-Mua Incorporated	CC23734	Registered	02/05/2008
10. Te Kohanga Reo Ki Rotokawa	CC24154	Registered	09/05/2008
11. Te Kohanga Reo National Trust Board	CC11324	Registered	11/10/2007
12. Te Kohanga Reo O Maanuka	CC23906	Registered	05/05/2008
13. Te Kohanga Reo O Murihiku	CC22219	Registered	28/03/2008
14. Te Kohanga Reo O Nga Kuaka Incorporated	CC24523	Registered	19/05/2008
15. Te Kohanga Reo O Te Hikuwai	CC23694	Registered	01/05/2008
16. Te Puawaitanga Te Kohanga Reo	CC23749	Registered	02/05/2008
17. Te Rakau Kowhai O Nga Tamariki te Kohanga Reo	CC22216	Registered	28/03/2008
18. Tumanako Rawhiti Te Kohanga Reo	CC22142	Registered	27/03/2008
19. Waikawa Te Kohanga Reo	CC23818	Registered	05/05/2008
20. Waimeha Te Kohanga Reo	CC23939	Registered	06/05/2008

Bibliography and Information Sources

Agency or Author	Title of Publication or Website	Date
Charities Commission	Statement of Intent 2007-2010	2007
	Update 29 - April 2008	
	Guide to the Act	
Inland Revenue	Technical tax area: Operational statements OS 06/02 Interaction of tax and charities rules, covering tax exemption and donee status (Dec 2006)	
Office for the Community & Voluntary Sector	Mahi Aroha : Maori Perspectives on Volunteering and Cultural Obligations	



SmartFund

Monitoring Report

for Installment On Execution of Agreement report due on 31/05/2008

APPLICATION/ORGANISATION DETAILS

SmartFund Ref: NDOE/HO.374.20209.16081
 Project Name: FOMANA Charitable Purposes Project
 Organisation Name: FOMANA Capital Ltd
 Address: 108 The Terrace,
 Wellington,

MONITORED DETAILS

Short Outcome	An informed understanding of the scale of affected Maori entities under the Charities Act 2005.
Output	Preliminary research and legal advice obtained.
Success Indicators	Research completed within budget and timeline.
Status	Achieved

Risk Monitoring	
Risk	The demand for the new standards and audit models for Maori is not met.
Risk Comments	The report contains 7 risk profiles with mitigations that raise the level of comfort in knowing that there is a piece of work that one can refer to get informed advice.
Status	Medium

ASSESSOR COMMENTS

A comprehensive report overviews the effects to Maori under the legal framework, the scope of Maori charitable entities that are affected by the framework and the risks that present these entities. The quality of advice is reflected in this work and is testimony to the depth of research that has gone into this the preliminary report.

QUALITY ASSESSOR COMMENTS

Progress report received from FOMANA Capital Ltd meeting requirements of the report related to the 'on execution' payment. The report details the legal framework affecting Māori charitable entities under current legislation, the scope and scale of Māori charitable entities and generic risks for Māori regarding non-compliance with new legislative requirements. The report contains a comprehensive discussion of the above issues and meets requirements for this output.

INVESTMENT MANAGER COMMENTS

the report meets the requirements of Output 1 - in that it scopes the legal framework and risks applicable to Māori charitable entities.

Assessor: _____

Date: _____

Quality Assessor: _____

Date: _____

Investment Manager: _____

Date: _____

Released under the Official Information Act 1982

REPORT 2

Charitable Purposes and Tax Compliance Systems Programme

RESEARCH REPORT 30 SEPTEMBER 2008

1. Generic risks for Māori entities with charitable status
2. Requirements of registered charitable entities and Roles of Charities Commission and IRD in new operational regime.
3. Awareness and practice of eight pilot Māori charitable entities and areas of risk.

Authors:

Wayne Mulligan MMgt
Brian O'Sullivan BSc
Rangimahora Reddy MBS (Accountancy)
Kim Skelton BA/LLB

Reviewers:

Peter Doolin LLB & Paul Morgan ExDipBus

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Table of Contents

Introductory Section	1
Introductory	4
Purpose	4
Scope	4
Format	4
Methodology	5
Limitation	5
Definitions	6
Disclaimer	6
Acknowledgements	6
Forward Programme and Outputs	7
Executive Summary Section	1
Summary	9
Section One	1
Section One: Generic risks for Māori entities with charitable status.	15
Generic Risks for Māori Entities with Charitable Status	15
Introduction	15
Eight Risk Factors	15
Overseas Experience (Canada & England - Wales)	16
Factors impacting on Charitable Registration Compliance	17
Factors deemed best practice in governance and decision making systems and processes for charitable organisations.	17
Legal compliance	17
Effective Governance	18
Strong Financial Oversight	18
Conclusions	19
Section Two	1
Section Two: Requirements of registered charitable entities and Roles of Charities Commission and IRD in new operational regime.	21
Introduction	21
Background	21
Registration Process	22
Regulatory role of the Charities Commission under the new operational regime	24
Monitoring compliance of charitable purpose under the Charities Act 2005	25
Regulatory Mechanisms under the Charities Act 2005:	25
Regulatory Role of Inland Revenue in the new operational regime	28
Registered Charitable Entities	28
Non-Registered Charitable entities	29
Monitoring compliance obligations of registered charitable entities	29
Regulatory mechanisms under the Revenue Acts	30
Working Together - the interface between Charities Commission and IRD	30
Section Three	1
Section Three - Awareness and practice of eight pilot Māori charitable entities and areas of risk.	33
Scope	33
Format	33
Report Objectives	33
Summary of Key Information	34
Methodology	35
Profile of the eight pilot Māori charitable entities	36
Interview Findings	37
Other Organisation Data	50
Participant Feedback	51
Conclusions	52
Appendices	53
Appendix One: Charities Commission Output Classes in monitoring compliance against charitable purposes	54
Appendix Two: Tax Penalties and Legislation administered by IRD	56
Civil Penalties:	56
Appendix Three: Charities Commission Registration Update	58
1 JULY 2008 - "BUSINESS AS USUAL"	58
SNAPSHOT Overview of types of charities registered as at 31 August 2008	58
CIRCUMSTANCES THAT PREVENTED APPLYING BEFORE 1 JULY?	59
Appendix Four: IRD Administrative Guidelines for Charitable organisations	60
Bibliography and Information Sources	66
Information Sources for Effective Governance	67

Introduction

Charitable Purposes and Tax Compliance Systems Programme

Introductory Section

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Introductory

Purpose

The purpose of this report is to fulfil the requirements of Outputs 2, 3 and 4 in the Investment Agreement ("Agreement") dated 1 May 2008 between Te Puni Kokiri and FOMANA Capital Ltd. Schedule C of that Agreement sets out the reporting requirements for this Report:

Short Term Outcome	Outputs	Due Date
An informed understanding of the scale of affected Māori entities under the Charities Act 2005.	1. Preliminary research and legal advice obtained.	Completed 31 May 2008
	2. Research reports completed on generic risk for Māori entities with charitable status.	30 September 2008
	3. Detailed research report completed on the requirements of the new charities and tax compliance framework.	30 September 2008
	4. Research report and profile completed on each pilot entity outlining areas at risk of compliance with the charities/tax regime.	30 September 2008

Scope

The scope of this report is to expand on the high level overview of Report 1 and to provide a more informed and in-depth understanding of:

1. Generic risks for Māori entities with charitable status;
2. The respective roles of Charities Commission and IRD and their interface;
3. The eight pilot Māori charitable entities; their understanding of the new regime and their own constitution; their practices and policies for tax exemption status.

Format

The report is presented in the following format:

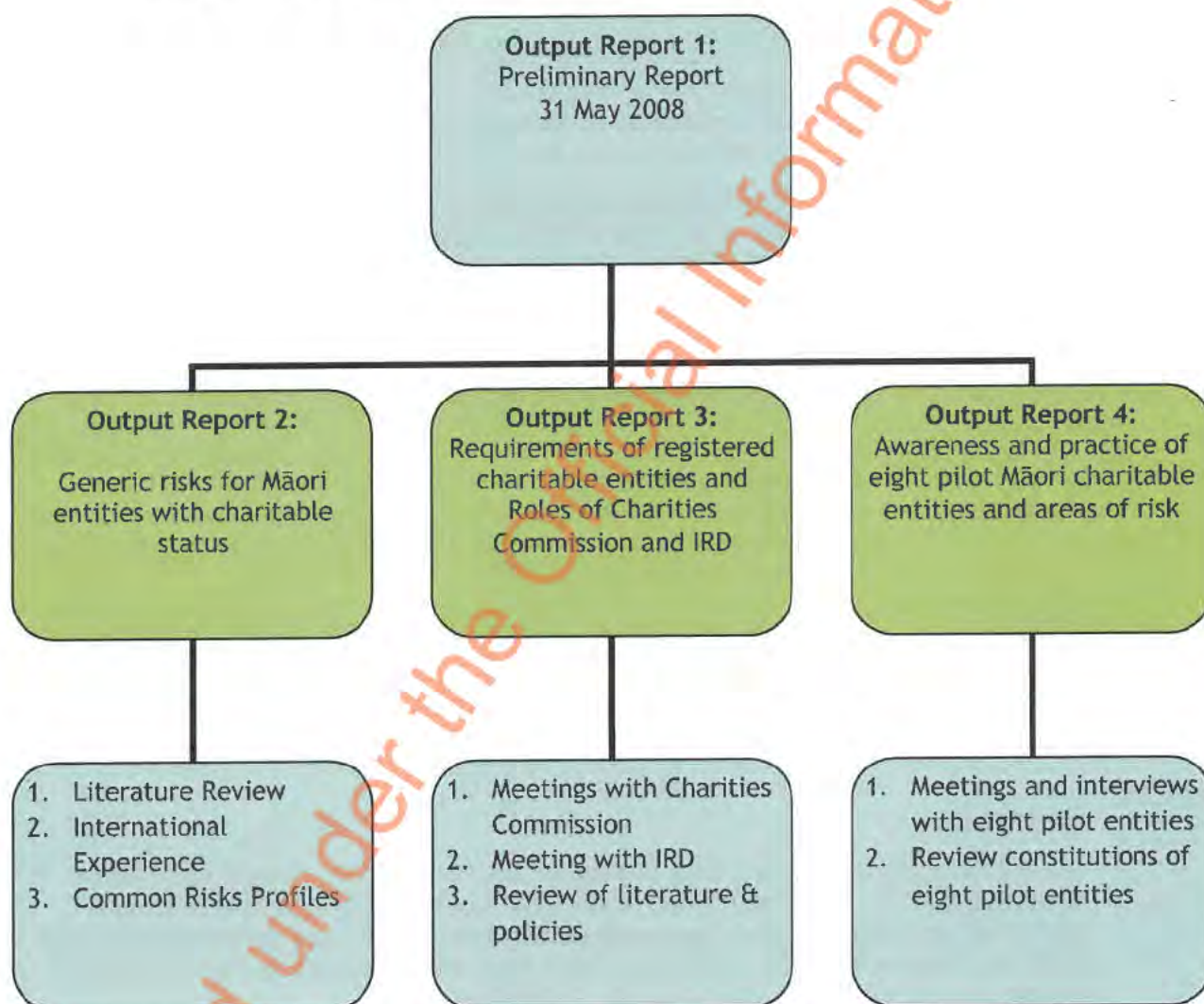
Introductory Section	Including purpose, format, methodology, definitions, acknowledgments
Executive Summary	Summary of key information
Section 1	Generic risks for Māori entities with charitable status.
Section 2	Requirements of registered charitable entities and Roles of Charities Commission and IRD in new operational regime.
Section 3	Awareness and practice of eight pilot Māori charities and areas of risk.
Appendices & Bibliography	

Methodology

The methodology for this report comprises three strands of research that contribute to an informed understanding of the charities and tax compliance framework and identification of risks for Māori charitable entities. The three strands are:

1. Research on generic risks for Māori entities with charitable status.
2. Research the roles of Charities Commission and IRD in new operational regime and the interface.
3. Research on the level of understanding, awareness and practice of eight pilot Māori charitable entities and areas of risk.

Diagram 1: Three Strands of Research



Limitation

This report is limited to providing Te Puni Kokiri with an overview in relation to the monitoring regime of the Charities Commission, the auditing role of the Inland Revenue Department, the analysis of generic risk for Māori entities with charitable status and the level of awareness within the nominated Māori charitable entities of relevant risk.

Definitions

For the purposes of this report, the following working terms and definitions are used:

Term	Definition
Charities Act 2005	Referred to as the Charities Act 2005 or the Act
Charities Commission	Referred to in the report as the Charities Commission or Commission
Constitution	Governing documents such as the organisation deed, constitution or charter
IRD	Referred to in the report as IRD or Inland Revenue
Māori charitable entities	Legal entities that are registered or eligible for registration with the Charities Commission and which are majority owned by Māori or whose members or beneficiaries, the majority of which are of Māori descent.
Risk	The chance of something occurring that will, should the event occur, have an impact on the achievement of organisational objectives. It is measured in terms of the likelihood of something happening and the consequences if it happens.
Reputation Risk	The risk of damage to the organisation's credibility and reputation.
Compliance Risk	The risk of failing to meet government standards/laws and regulations.
Risk Management	A systematic and logical process of identifying, analysing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process in a way that will enable an organisation to minimise losses and maximise opportunities.
Stakeholders	Those individuals, groups, institutions etc (either internal or external to the organisation) who are or perceive themselves to be affected by a decision or activity.
Board	Includes boards of directors, trustees, or other governance entity.

Disclaimer

This report presents the research findings of the stated three strands of research. It is prepared for Te Puni Kokiri only. It does not purport to provide specific legal advice for any entity on their legal obligations under or relating to the Charities Act 2005, the Income Tax Acts and or any other relevant legislation and or case law. It should not be relied upon by any entity accordingly.

Acknowledgements

FOMANA would like to acknowledge Te Puni Kokiri for supporting this project. We would like to thank Katrina Williams, John Moreno and Jacque Hayes of IRD who gave helpful assistance in clarifying the role of IRD in terms of charitable entities. We extend our thanks to the Charities Commission, especially to the Chief Executive Trevor Garrett who gave generously of his time to answer our questions, and to Adrian Shields, Policy Manager, who provided useful information to assist in the writing of Section Two of this report.

We acknowledge the work of consultants Hayden Wano, Jane Hawkins-Jones and Rangimahora Reddy of Tui Ora Ltd, who carried out the extensive literature review and research that contributed to Section One. Rangi is primarily responsible for conducting all the interviews with the eight pilot Māori charitable entities and for producing the foundational and informative research that comprises Section Three. Thanks also to the administration and information technology staff at Tui Ora, whose assistance is appreciated. We acknowledge with thanks the work of consultant Brian O'Sullivan of Solas Consulting, who met with staff at IRD and Charities Commission. Brian's research for Section Two has added greatly to our understanding of the respective roles and interface of these two key agencies.

Finally, we acknowledge the representatives of the eight pilot Māori charitable entities who engaged candidly and with considerable forethought at the interview sessions. The discussions held and the information gleaned at the interviews has already prompted some organisations to reassess their current practice and risk management strategies. We appreciate your commitment to the research phase of the pilot programme.

Our next phase will be to take the research findings of this report and to work with you to prepare risk management tools and develop tax exempt assurance & beneficiary training systems for each of your organisations. He mihi nui ki a koutou:

- Ngati Rarua Atiawa Iwi Trust Board
- Taranaki Iwi Trust
- Taranaki PHO Ltd
- Te Aroha Medcare Ltd
- Te Atiawa Ki Te Upoko O Te Ika A Maui Potiki Trust
- Te Kaahui o Rauru
- Te Rau Pani Māori Mental Health Trust
- Tui Ora Ltd

Forward Programme and Outputs

The following table outlines the outputs for the next two reports¹.

Short Term Outcome	Output 6	Due Date
Increased awareness of the requirements of the new charity and tax compliance framework.	Report completed on risk profile and systems, policies and audit model completed.	20 February 2009
	Output 7	Due Date
	Report completed recommending risk mitigations to ensure consistency and compliance with the charities/tax regime.	30 March 2009

¹ Note: Output 5 is for filing of accounts only.

Executive

Charitable Purposes and Tax Compliance Systems Programme

Executive Summary Section

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Summary

This report combines three separate output reports. These being:

1. Generic risks for Māori entities with charitable status;
2. The respective roles of Charities Commission and IRD and their interface;
3. The eight Māori charitable entities; their understanding of the new regime and their own constitution; their practices and policies for tax exemption status.

The rationale is that these are interdependent pieces of work that assist in building a greater understanding of the risks and responsibilities of charitable entities and tax exempt status.

Generic Risks

The first section of the report provides key information that assists with understanding generic risks. Included as part of this body of knowledge is an international scan of similar jurisdictions that have recently established commissions or similar bodies to oversee charitable purposes and tax exemption with powers to register, monitor, educate, and regulate compliance and non-compliance.

This report has identified eight generic risks (listed below). Further research could be undertaken to determine the scale of risk across the sector of registered charitable entities, and particularly to research the highest risk factors for Māori charitable entities.

1. Operating outside "charitable purposes" as per Trust Deed or Rules
2. Misapplication of Trust funds
3. Loss of reputation
4. Legal Action against Trustees/Directors
5. Misappropriation of Trust funds
6. Penalties applied by IRD resulting from loss of tax exemption status
7. De-registration by the Charities Commission
8. Loss of tax exemption status

International studies from Canada, England & Wales have highlighted some key areas of non-compliance by charitable entities, particularly related to inadequate financial systems, failure of duty of care by trustees/directors, and non-compliance with stated charitable purposes. The Canadian non-compliance factors are of particular interest to New Zealand and Māori charitable entities because of the parallels in historical experiences, and more recently, in the post-settlement developments that have occurred in both nations.

While the Canadian literature did not specifically mention indigenous charities, there could be value in undertaking such a comparative research study in the future.

The need for all charitable organisations to practice effective governance and excellent administration and record-keeping is critical and cannot be underestimated.

The international findings are consistent with the findings from the eight pilot projects in Section Three. This also aligns with anecdotal evidence provided by the eight pilot entities, other key Māori entities and from discussions with numerous central and local government departments.

International findings:

Inaccurate tax receipts	Inaccurate tax receipts	Weak Financial controls
Deficient filing (inaccurate, late, missing)	Deficient filing (inaccurate, late, missing)	Inappropriate remuneration or benefits for Directors
Inadequate books and records	Non-charitable Activities	Deficient filing, (inaccurate)
Concerns with other Income Tax Act matters	Inadequate books and records	Failure of duty of prudence by Trustees
<i>Non-charitable activities</i>	Cannot meet disbursement quota	Failure of duty of care by Trustees (Governance issues equal fifth in rank)

Charities Commission & Inland Revenue

Section Two provides an insight into both the Charities Commission and Inland Revenue.

In this report work is done to clarify:

1. Charities Commission's role in monitoring compliance against the charitable purposes of the organisation in the annual returns process;
2. Inland Revenue's role in administering the Revenue Acts and what action it can or will take if it considers that an organisation may be operating outside the legislation or been de-registered by the Charities Commission; and
3. How the two agencies will work together on charitable purpose compliance matters.

From 1 Feb 2007, the Commission has been responsible for registering entities as charitable entities on the Register of Charitable Entities. Existing entities that have tax exemption status under the old system had until 1 July 2008 to register with the Commission. The Commission decides if an entity qualifies for registration as a charitable entity by evaluating whether it is operating within its charitable purposes. Once registered, charitable entities must:

- a. file an annual return within six months of their balance date (i.e. end of financial year)²; and
- b. notify the Commission within three months if certain information about their organisation changes (see below).

The Annual Return Form requires specific information. Charitable entities have a duty to notify the Commission of certain changes under section 40 of the Act. The Act specifies six changes that must be notified, including the date when the changes come into effect.

The Commission has a monitoring role; the key focus is to determine whether or not a registered charitable entity continues to be qualified for registration under the Act. The fundamental part of the Commission's monitoring role is likely to be ensuring a registered 'charitable entity's' compliance with the defined 'charitable purpose'.

² There may be potential for extending this deadline providing agreement is provided by the Commission

If the Commission comes to a view that an entity is not fulfilling its obligations under the Charities Act 2005, or no longer qualifies to be registered as a charity, the entity is advised of the concern and given the opportunity to address it. The Commission does, however, have a number of regulatory mechanisms available it under the Charities Act 2005. These include:

- issuing warning notices;
- publication of possible breach, this may result in an investigation of the entity by Inland Revenue as well as the Commission;
- issue administrative penalties.

Possibly the most significant enforcement mechanism is the ability to deregister a charitable entity under section 31 of the Charities Act 2005. A deregistration entity would lose its tax exemption status. This is also likely to lead to investigation by Inland Revenue and subsequent repayment of liable income tax, with potential penalties.

The Commission also has powers to control activities of non-registered entities that claim to be a charitable entity. Under section 37, the Commission can stop a person using a style or title including the words 'registered charity' or stating or implying that the person is registered as a charitable entity or that an entity the person acts on behalf of is a registered charity. An offence under section 37 is liable on summary conviction to a fine not exceeding \$30,000.

The Inland Revenue has a regulatory role to ensure that taxpayers fulfil their tax obligations with respect to income received. Charitable organisations are liable for income tax if:

- they operate with no written rules, constitution or trust deed;
- they operate under a set of rules, a constitution or a trust deed that does not meet the requirements for an income tax exemption;
- they use business income for charitable purposes outside New Zealand;
- they are, from 1 July 2008, not registered by the Charities Commission.

The Income Tax Act 2007 (sections CW 41 and CW 42) and the Estate and Gift Duties Act 1968 (section 73) set out a number of income tax and duty exemptions. Some of these give benefits to charitable organisations and some give benefits to people or companies who make donations to such organisations. There are, generally, three main conditions that a charitable organisation must meet to qualify for these exemptions:

- The organisation's aims and activities must be exclusively charitable.
- The organisation's income or funds cannot be used (or be available for use) to benefit any of its members, trustees or associates.
- As of 1 July 2008, charities must also be registered with the Commission to qualify for income tax exemptions

Inland Revenue accepts the Commission's decision to register a charitable entity as proof that the entity meets the definition of charitable purpose and is eligible for exemptions from income tax on all or some of its income and other tax benefits.

While the Charities Commission is responsible for monitoring compliance with the stated charitable purpose of charitable entities, it is Inland Revenue that monitors charitable entities to ensure that their tax obligations are fulfilled with respect to income received. Charitable entities may be in breach of their tax obligations by failing to pay the appropriate tax on any income they receive by the appropriate time or by claiming tax benefits where they are not eligible. Registered charitable entities are likely to be in breach of their tax obligations predominantly by:

- applying the funds to a purpose outside the charitable purposes stated in the empowering documents; or
- applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients.

The Commissioner of Inland Revenue has a number of regulatory mechanisms available under the Revenue Acts to be used in regard to non-compliance with tax obligations. In general, however, failure to meet tax obligations may result in civil penalties³, criminal penalties⁴, or both. The penalties resulting from a breach could also result in include increased periodic audits of the charitable entity.

The establishment of the Charities Commission has essentially set up a formal process around an area that was relatively informal in the past. Although the Commission has overall accountability for that area of work, Inland Revenue continues to have responsibility for deciding whether the entities are eligible for tax exemptions.

There is potential for the Commission and Inland Revenue to cooperate on a number of fronts and equally likely is the potential for this entities to disagree on the definition of 'charitable purposes', particularly where an organisation (or sector) that was not previously accepted by Inland Revenue as having a charitable purpose is registered by the Commission as a 'charitable entity'.

Eight Pilot Entities

Section Three studies the awareness of eight Māori entities that have chartable purposes and tax exemption status. What become evident was that these entities were linked to numerous other community and Māori entities, many that operated with charitable purposes. A questionnaire was developed and this along with the FOMANA 31 May 2008 report: Māori Charitable Entities under the Charities Act 2005 and the Income Tax Act where sent to each participant. Then interviews were held.

Participant structures range from trusts to private limited liability companies. Core activities included:

- mandated iwi organisations;
- post settlement iwi resource management trust;
- Māori development organisation;
- primary healthcare organisation;
- general practice; and
- specialist Māori mental health service provider.

The average length of time in operation was less than five years across the group. The range for participants went from less than two years in operation to more than ten. Participants were asked to do the following for each factor:

- Describe the organisation's level of understanding;
- Describe the potential impact they thought it would have on their organisation if it was to occur; and
- Describe the steps they would take to mitigate against the risk.

The majority of participants identified their level of understanding of the:

- role of the Charities Commission as Good (range Basic to Good).

³ A civil penalty is one imposed by Inland Revenue rather than a court (i.e. late filing penalties; non-electronic filing penalties; late payment penalties; and shortfall penalties).

⁴ A criminal penalty is one imposed by a court upon conviction of an offence (i.e. evasion; obstruction; and aiding or abetting another person to commit an offence).

- monitoring functions of the Charities Commission as Good (range Basic to High).
- role of IRD as Good (range Basic to High).

The review of participant's activities against its constitution indicated an area of potential improvement as the majority did not conduct an internal or external review.

Participants identified eight potential impacts to their organisation across all the risks:

1. Backlash from beneficiaries
2. De-registration (loss of charitable status)
3. Financial challenge (loss of cashflow)
4. Financial viability and sustainability
5. Loss of Reputation
6. Loss of tax exemption
7. Loss of Mana / Stigma attached
8. Reputation risk-several levels, personal, professional etc

Participants identified a detailed list of mitigation strategies, including but not limited to:

- Annual external audit & audit & risk committee
- Board with sound business acumen & skill
- Clear lines of delegation
- Educate all Trustees of charities requirements
- Ensuring processes are up to date and good policy & procedures
- Insurance (Public Liability, Directors etc)
- Process in place prior to distribution to beneficiaries (documentation in place to evidence acceptance of terms)
- Reviewing activities against constitution, contractual obligations
- Staying within core activities
- Training of beneficiaries

All recommended that the FOMANA report dated 31 May 2008 outlining Preliminary research on the legal framework affecting Māori Charitable Entities under the Charities Act 2005 and the Income Tax Act be used across their stakeholder groups, notably staff, trustees, beneficiaries and other relevant stakeholders.

The benefits sought from this project as identified by participants were:

- Clarification of roles & organisation responsibilities
- Feedback on weakness
- Suggested ways of improvement
- Good practice checklists (to assist with compliance)
- Guide on best practice
- Identify what constitutes acceptable documentation for IRD audit re: misapplication
- Another set of eyes looking at compliance "charities regime"
- Continuous updating around obligations and responsibilities

Throughout the interviews it was noticeable that participants had an openness and willingness to further improve systems and knowledge. It was also apparent that many of the issues faced by participants were similar and that there was an opportunity to gain real efficiencies and consistency (without compromising the autonomy of participants) in addressing compliance risk.

Section One

Charitable Purposes and Tax Compliance Systems Programme

Section One

Generic Risks for Māori Entities with
Charitable Status

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Section One: Generic risks for Māori entities with charitable status.

Generic Risks for Māori Entities with Charitable Status

Introduction

This section identifies eight generic risks and looks at overseas experiences with regards to charities and tax exempt registration and compliance systems.

Eight Risk Factors

In our previous Report dated 31 May 2008, FOMANA identified seven risk factors. Since that report we have identified an additional risk factor to make a total of eight risk factors, namely:

1. Operating outside “charitable purposes” as per Trust Deed or Rules

This risk exists when an organisation operates outside of the charitable purposes as set out in its constitution.

2. Misappropriation of Trust funds

This risk exists when an organisations funds are applied for purposes which were not approved and do not benefit the organisation. This could amount to criminal activity.

3. Misapplication of Trust funds

This risk exists when an organisation applies funds to a related organisation or entity for charitable purposes but those funds are subsequently misapplied by the recipient.

4. Penalties applied by IRD for failure to comply with charitable purposes

This risk exists when an organisation has not complied with its charitable purposes and faces financial penalties of interest and/or taxes that can be backdated to the period when the non-compliance occurred.

5. De-registration by the Charities Commission

This risk exists when an organisation is removed from the Charities Register.

6. Loss of tax exemption status

This risk exists when an organisation loses its tax exempt status.

7. Loss of reputation

This risk exists when an organisation faces reputation damage at a public level through adverse media attention.

8. Legal Action against Trustees/Directors

This risk arises as a result of non-compliance either with its constitution and or relevant legislation and exists when trustees/directors face legal action for their role in the breach.

These eight risk factors form the basis for the questions around risk awareness and mitigation used in the interviews with the eight pilot Māori charitable entities, and which are reported on in Section Three of this report.

Overseas Experience (Canada & England – Wales)

For the purposes of this report, we conducted a brief literature review and research of other countries with similar charities/tax regimes to identify any similarities or differences in the key risk areas or areas of non-compliance.

The highest ranking factors contributing to non-compliance of charities with their respective regimes were determined from three sources of data. They were the Canada Customs and Revenue Agency (CCRA) compliance division files, CCRA revoked organisations and the Charities Commission for England and Wales. The table below reveals the rankings of factors for non-compliance.

Table 1: Factors of Non-Compliance

Ranking of factors for non-compliance	CCRA Compliance (Canada)	CCRA Revoked (Canada)	Charities Commission (England - Wales)
1.	Inaccurate tax receipts	Inaccurate tax receipts	Weak Financial controls
2.	Deficient filing (inaccurate, late, missing)	Deficient filing (inaccurate, late, missing)	Inappropriate remuneration or benefits for Directors
3.	Inadequate books and records	Non-charitable Activities	Deficient filing, (inaccurate)
4.	Concerns with other Income Tax Act matters	Inadequate books and records	Failure of duty of prudence by Trustees
5.	Non-charitable activities	Cannot meet disbursement quota	Failure of duty of care by Trustees (Governance issues equal fifth in rank)

According to this table the highest ranking factor for non-compliance by registered charities is linked to weak financial systems and processing. This factor resonates across all three data sets. Other key factors for non-compliance are brought about by charities engaging in non-charitable activities and Trustees' failure in their duties. The Canadian regime is unique in that it has a disbursement quota⁵ that must be met each year unless approval is gained from the CCRA to temporarily accumulate for large projects.

⁵ Canadian Inland Revenue Department. (2001). Tax and Charities - A Government Discussion on Taxation Issues Relating to Charities and Non-Profit bodies.

Factors impacting on Charitable Registration Compliance

In this section an overview of charitable registration compliance and its impact on the entity, the Governance Board, and the public is highlighted. From an entity viewpoint, charitable registration compliance means the ability to:

- maintain or secure tax-exempt status;
- secure (as not needed for existing donees) in some cases “donee” status with the IRD;
- maintain or secure the ability to secure grants or other benefits from government and philanthropic agencies that may require charitable status; and
- raise public profile and credibility (particularly in fund-raising activities).

From the viewpoint of the Governance Board, being part of a compliant charitable organisation requires demonstration of compliance with the rules of the entity and the relevant legislation through:

- implementation of best practice operational and governance systems and processes; and
- securing or accessing relevant skills for the entity to ensure compliance and best practice is maintained.

From a public viewpoint, a compliant registered charitable organisation is beneficial in terms of its:

- ability to demonstrate sector accountability and transparency; and
- ability to enhance public confidence in registered entities.

Factors deemed best practice in governance and decision making systems and processes for charitable organisations

A review of good governance literature in New Zealand and overseas reveals a common theme in that there is no “one size fits all”. However, there are three factors that are critical to best practice for charitable organisations. These are:

- Legal Compliance
- Effective Governance and
- Financial Oversight.

Legal compliance

Legal compliance is one of the three critical factors identified by the Panel on the Nonprofit Sector Report (US) “Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations”, October 2007. In essence it aims to identify if the organisation has systems, policies and/or processes that:

- clearly identify, monitor and evaluate governance and management responsibilities;
- clearly identify and monitor the legislation applicable to the organisation;
- support a code of ethics and conduct;
- address the handling of conflicts of interest, whistleblower protection, legal breaches whether intentional or unintentional;
- secure important business documents and records; and
- ensure major risks to the organisation are identified, reviewed and mitigation plans are implemented.

The presence of these elements within an organisation will assist charitable entities in complying with their relevant legal obligations. However, the absence of such will naturally pose a possible risk for non-compliance as well as potentially support a need for education/training packages.

Effective Governance

A second key factor is to identify if the board fulfil its oversight and governance role effectively through systems, policies and/or processes that:

- regularly review and approve core organisational documentation ie. the mission statement, strategic plan, business plan and financial budget;
- clearly identify delegated authorities;
- clearly identify how roles on the board are allocated to its members;
- facilitate documentation of regular formal meetings of the board;
- address conflicts of interest and removal or disqualification of board members;
- regularly evaluate the performance of the CEO;
- provide a induction process for new board members;
- regularly evaluate the performance of individual board members as well as the group;
- clearly identify remuneration for board members and the underlying rationale for the remuneration level implemented; and
- ensure major risks to the organisation are identified, reviewed and mitigation plans are developed or implemented.

The presence of these elements within an organisation will assist the board in fulfilling its supervision and governance responsibilities effectively. However, the absence of such will naturally identify areas of possible risk of non-compliance as well as potential areas of development needed via education/training packages.

Strong Financial Oversight

The third key component is to identify if the organisation can demonstrate robust financial stewardship of resources through systems, policies and/or processes that:

- ensure complete, current and accurate financial records are kept and reported to the board at regular intervals;
- ensure actual financial performance is measured and monitored against budget;
- facilitate regular independent review or audit from an appropriately qualified party; and
- ensure financial transactions are not in breach of legal requirements or governing organisational documents; and
- clearly identify remuneration for staff members and the underlying rationale for the remuneration level implemented.

This area is particularly relevant given the results of the non-compliance study as outlined in section 1.2 above. The absence of these elements from an entity's operations will give rise to possible risk/s of non-compliance as well as potential areas of development needed via additional capacity and/or education/training packages.

Conclusions

Section One of this report identifies eight distinct risk factors for Māori entities with charitable status. These are not ranked in any order of importance or likelihood of occurrence as there is insufficient data available, principally due to the relative short time that the new charities and tax regime has been in operation. We suggest that this research be undertaken around three to five years after the Commission's registration system has been in place. Meanwhile, we have looked to examples overseas to gain an insight into risk factors with the highest likelihood.

International experience in Canada and the UK (England - Wales) indicates that the highest risk factors are linked to:

- Inaccurate tax Receipts
- Weak Financial controls
- Deficient filing (inaccurate, late, or missing files)
- Inadequate books and records
- Failure of duty of prudence or duty of care by Trustees (or Governance Officers)
- Non-charitable activities.

The Canadian non-compliance factors are of particular interest to New Zealand and Māori charitable entities because of the parallels in historical experiences, and more recently, in the post-settlement developments that have occurred in both nations. While the Canadian literature did not specifically mention indigenous charities, there could be value in undertaking such a comparative research study in the future.

The need for all charitable organisations to practice effective governance and excellent administration and record-keeping is critical and cannot be underestimated.

The risks are real but can be mitigated and managed by good practice from the boardroom to the marae atea. Ideally, everyone involved in the organisation should understand the charitable purposes of the organisation, the need to always operate within them, and that the tax-exemption status should never be put in jeopardy. That requires vigilance across all activities and levels of the organisation.

Resources that offer valuable information to charitable organisations from an international perspective are provided as follows:

[Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations \(US\)](#)

The guide outlines 33 practices designed to support board members and staff leaders of charitable organisations to assist improve operations.

[Charities Good Practice Checklist \(Canadian\)](#)

Guidelines for maintaining registered status. Easy to follow checklists to help with the responsibilities of operating a registered charity.

For further Information Sources on effective governance, see the Bibliography section at the rear of this report.

Section Two

Charitable Purposes and Tax Compliance Systems Programme

Section Two

Requirements of registered charitable entities
and
Roles of Charities Commission and IRD in new operational regime.

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Section Two: Requirements of registered charitable entities and Roles of Charities Commission and IRD in new operational regime.

Introduction

The objectives of Section Two of the report are to:

- Clarify the Charities Commission's role in monitoring compliance against the charitable purposes of the organisation in the annual returns process;
- Clarify Inland Revenue's role in administering the Revenue Acts and what action it can or will take if it considers that an organisation may be operating outside the legislation or been de-registered by the Charities Commission; and
- Clarify how the two agencies will work together on charitable purpose compliance matters.

The format for this section of the report is:

Background

Diagram 2 - Application for registration as a charitable entity

Regulatory role of Charities Commission under the new operational regime

Regulatory role of IRD under the new operational regime

Working together - the interface between Charities Commission and IRD

Background

Charitable organisations can receive many types of income, including subscriptions, grants, subsidies, donations or koha, fees, raffle money, trading profits, proceeds from asset sales etc.

In the past, income tax exemptions have been available to entities such as trusts, societies and institutions that met Income Tax Act 2004 requirements in terms of deriving income for charitable purposes. Organisations were obliged to self-assess using sections CW 34 (non-business income) and CW 35 (business income) of the Income Tax Act 2004 to see if the income tax exemption applied to them. In practice, many sought the opinion of the Commissioner of Inland Revenue on their tax status. On 1 July 2005 the Charities Commission was established by the Charities Act 2005. The key functions of the Commission are determined by the Act and include:

1. To establish and maintain a registration and monitoring system for charitable organisations; and
2. To provide support and education to the charitable sector on good governance and management.

From 1 July 2008, entities that wish to be eligible for tax-exempt status by operating under a charitable purpose must first have qualified and be registered as charitable entities with the Charities Commission before they apply. That exemption applies to:

- exemption from income tax for non business income;
- exemption for business income derived by or in support of charities;
- exemption from gift duty for persons who make gifts for charity.

Once organisations are registered as charitable entities they receive information from the Inland Revenue outlining the exemptions that they are entitled to and what they have to do to comply with requirements for the exemptions.

Registration Process

The following statistics have been sourced from the Charities Commission website and provide a snapshot of the registration statistics to date:⁶

4 August 2008	10,260	Currently making initial reviews of applications received from 19 May 2008
8 September 2008	12,119	Our registration analysts are currently making initial reviews of applications received from: 12 June 2008
15 September 2008	12,470	Currently making initial reviews of applications received from: 19 June 2008*
		*Remember: many straightforward applications, once they reach the front of our queue, are processed within several weeks.
		However, if there are any complex issues involved, or the application requires additional work by a senior analyst to confirm an analyst's initial view, it will take longer to complete the process - currently several additional months.

The same website in July reported that:

...Our early estimates of there being around 25,000 charitable organisations in New Zealand appear to have been reasonably accurate - in total, we have received almost 24,000 applications (about 1,500 of those in the last two days of June).

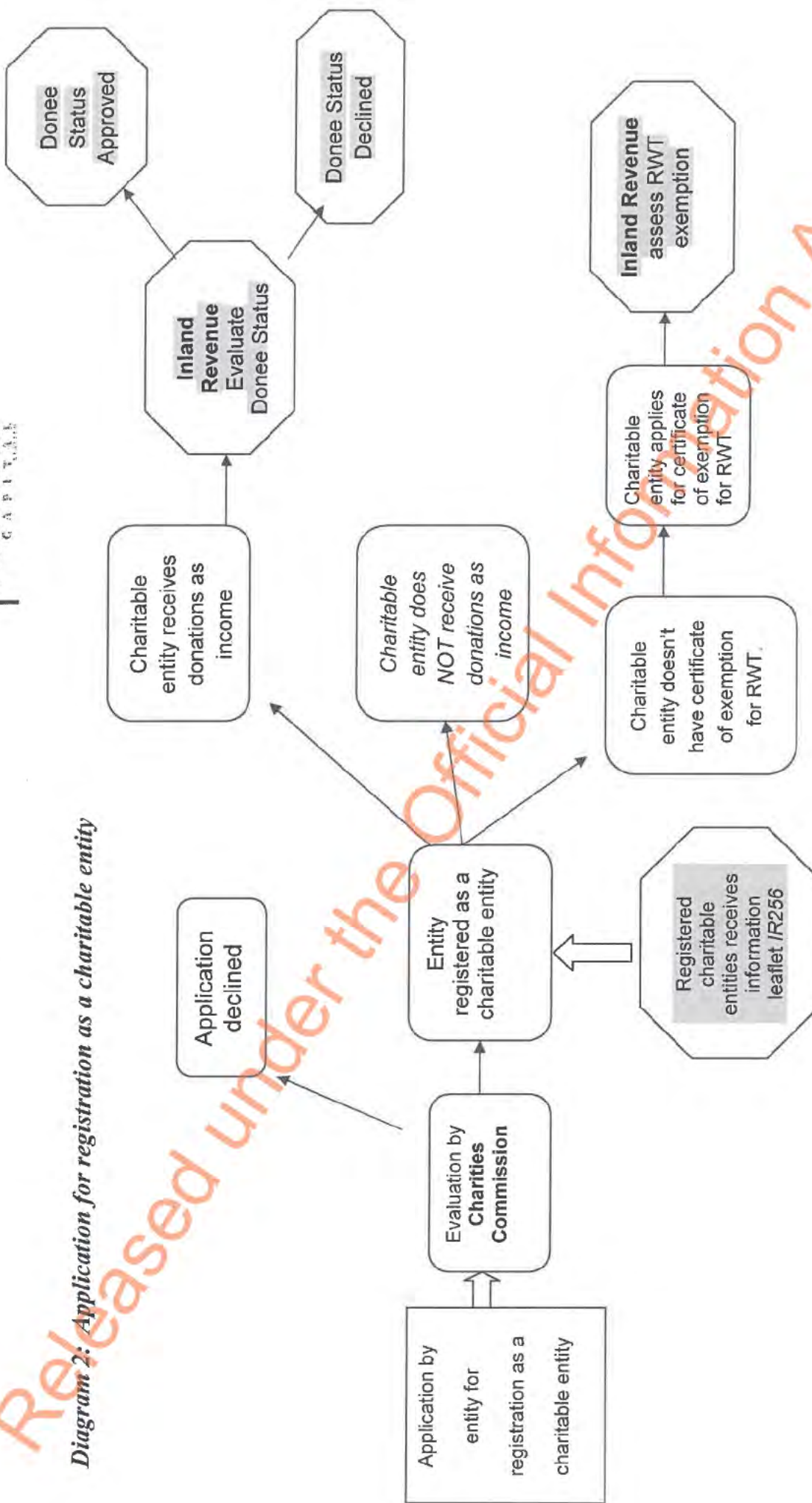
It is likely that it will take us to the end of the year to process all of them, so please be patient - and remember that where necessary, we can backdate properly-completed applications.

Based on these numbers, it appears that roughly half the applications received have been registered and there remains a significant backlog which will likely take several months to clear.

A Diagram of the application process for registration as a charitable entity follows on the next page.

⁶ See also Appendix Three Charities Commission Registration Update

Diagram 2: Application for registration as a charitable entity



Regulatory role of the Charities Commission under the new operational regime

From 1 Feb 2007, the Commission has been responsible for registering entities as charitable entities on the Register of Charitable Entities. Existing entities that have tax exemption status under the old system had until 1 July 2008 to register with the Commission (or risk forfeiting this status).

Section 17 of the Charities Act 2005 sets out what is required by an application for registration with the Commission.

On receipt of an application from an organisation for registration as a 'charitable entity', the Commission decides if it qualifies for registration as a charitable entity by evaluating whether it is operating within its charitable purposes [using well-established common law tests for charitable purposes] and whether the organisation's name and officers meet the requirements of the Act.

Once registered, charitable entities must:

- c. file an annual return within six months of their balance date (i.e. end of financial year)⁷; and
- d. notify the Commission within three months if certain information about their organisation changes (see below).

For the purposes of the Charities Act 2005, an Annual Return consists of a completed Annual Return Form and a copy of the 'charitable entity's' accounts. Once a charitable entity is registered, the Commission informs the entity of the date by which it has to submit the Annual Return.

The Annual Return Form requires information from the registered charity (although some of this information is unlikely to change from the initial application) such as:

- the sectors the charity operates in
- the activities it is involved in
- who benefits from those activities
- its geographical area of operation
- information about the people in the charity (e.g. how many people work as volunteers etc.
- Financial information relating to income and expenditure, assets and liabilities and equity⁸.

Charitable entities have a duty to notify the Commission of certain changes under section 40 of the Act. The Act specifies six changes that must be notified, including the date when the changes come into effect⁹. The changes are:

- a change to the name of the charitable entity;
- a change to the address for service of the charitable entity;
- a change in the officers of the charitable entity, whether as the result of an officer ceasing to hold office or the appointment of a new officer, or both;
- a change in the balance date of the charitable entity;
- a change to the rules of the charitable entity;
- a change to the purposes of the charitable entity.

⁷ There may be potential for extending this deadline providing agreement is provided by the Commission

⁸ This is broken down into several categories, including membership fees, donations, grants, salaries and wages, investments.

⁹ Entities must use a specific 'Notification of Change Form' or the 'Annual Return Form'.

Monitoring compliance of charitable purpose under the Charities Act 2005

The Commission's key monitoring focus is to determine whether or not a registered charitable entity continues to be qualified for registration under the Act. The future balance between the Commission's regulatory and non-regulatory functions are still being worked through, however, a fundamental part of the Commission's monitoring role is likely to be ensuring a registered 'charitable entity's' compliance with the defined 'charitable purpose'.

In 2008/09, the Commission's focus is to complete the processing of applications for registration of the budgeted 25,000 charities¹⁰. Monitoring is unlikely to form a significant part of this as applications for registration are still being processed and a significant number of registered, or potentially registered, charitable entities have yet to submit an Annual Return. The intelligence available for monitoring purposes is, therefore, still being assembled.

Although it will continue to register new charitable entities, the Commission's focus will shift in 2009/10 (and beyond) to the receipt and processing of annual returns and monitoring activities¹¹ to ensure that entities registered as charitable entities continue to be qualified for registration as charitable entities.

Monitoring activities are likely to be driven by:

1. The Commission's Framework for monitoring of registered charitable entities activities (expected 31 March 2009) using information and intelligence derived from:
 - Annual returns submitted by registered charitable entities
 - Notifications of changes to the rules etc.
 - New applications for registration for charitable entities.
2. Complaints about registered charities brought to the Commissions attention.

Where the intelligence obtained on a charitable entity provides the Commission with reason to investigate further, it can inquire into that charitable entity or into persons engaged in conduct that constitutes a breach of the Act or serious wrongdoing in connection with the charitable entity. No such investigations have been carried out at this stage.

Regulatory Mechanisms under the Charities Act 2005:

If the Commission comes to a view that an entity is not fulfilling its obligations under the Charities Act 2005, or no longer qualifies to be registered as a charity, the entity is advised of the concern and given the opportunity to address it. The Commission does, however, have a number of regulatory mechanisms available it under the Charities Act 2005. These include:

¹⁰ Statement of Intent, 2008-2011

¹¹ The focus will also shift to the provision of information and support on governance and good management.

(1) Warning Notices

Under section 54 of the Charities Act, in the event of a breach, the Commission may give a warning notice to the charitable entity where:

- A charitable entity or person in connection with the charitable entity, has engaged in, or is engaging in, conduct that constitutes a breach of the Act or serious wrongdoing; or
- A charitable entity is, or may be, no longer qualified to be registered as a charitable entity; or
- A person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of section 37.

Giving a warning notice to the charitable entity being investigated is likely to be the first enforcement mechanism used by the Commission in the event of a breach identified under the Charities Act 2005.

(2) Publication of Possible Breaches /Serious Wrongdoings

If the Commission considers that the entity (or person) to whom a warning notice has been given has failed to remedy one or more of the matters identified by the Commission by the date referred to in sections 54(3)(d), the Commission may publish details of a possible breach, possible serious wrongdoings, and other matters under section 55 of the Act. This would likely result in immediate investigation of the entity by Inland Revenue (if the Commission has not already instigated such an investigation by reporting its concerns to them).

(3) Administrative Penalties:

Under section 58 of the Charities Act 2005, the Commission may also utilise administrative penalties for:

<i>a failure by the charitable entity to send or deliver to the Commission a notice under section 40 within the time prescribed by that section</i>	<u>Time Period</u> Within 3 months of the later of: (i) the effective date of the change; or (ii) the charitable entity first becoming aware of the change	<u>Penalty</u> \$100
a failure by the charitable entity to send or deliver to the Commission an annual return under section 41 within the time prescribed by that section.	<u>Time Period</u> Within 6 months after each balance date	<u>Penalty</u> \$200

(4) Deregistration

Possibly the most significant enforcement mechanism available to the Commission is the ability to deregister a charitable entity under section 31 of the Charities Act 2005. The Commission can remove the entity from the register on the grounds that:

- The entity is not, or is no longer, qualified for registration as a charitable entity;
- There has been a significant or persistent failure by the entity to meet its obligations under this Act or any other enactment;
- There has been a significant or persistent failure by any one or more collectors who act on behalf of the entity to meet their obligations under this Act;
- The entity has engaged in serious wrongdoings or any person has engaged in serious wrongdoing in connection with the entity; or
- The entity has sent or delivered to the Commission a request to be removed from the register.

Deregistration is significant as the deregistered entity would lose its tax exemption status. This is also likely to lead to investigation by Inland Revenue and subsequent repayment of liable income tax, with potential penalties.

The Commission does not currently have a formal policy on how it will determine the date on which de-registration becomes effective. It is not yet clear, therefore, whether a de-registered entity will be liable for income tax payments from:

- the date of de-registration and notice to IRD;
- the date at which the Commission discovers non-compliance with charitable purposes; or
- the date at which the entity can be shown to have operated outside its charitable purposes.

To date, there are no known cases of deregistration but undoubtedly there will be some in the future. This is an area for further study and observation, in particular, whether deregistration on its own, or together with the loss of tax exemption, will result in those entities becoming financially unsustainable.

(5) Fines for offence of claiming to be a 'registered charity' if not registered

The Commission has powers under the Act to control activities of non-registered entities that claim to be a charitable entity. Under section 37, the Commission can stop a person using a style or title including the words 'registered charity' or stating or implying that the person is registered as a charitable entity or that an entity the person acts on behalf of is a registered charity.

An offence under section 37 is liable on summary conviction to a fine not exceeding \$30,000.

Regulatory Role of Inland Revenue in the new operational regime

Inland Revenue has a regulatory role to ensure that taxpayers fulfil their tax obligations with respect to income received.

Charitable organisations are liable for income tax if:

- they operate with no written rules, constitution or trust deed;
- they operate under a set of rules, a constitution or a trust deed that does not meet the requirements for an income tax exemption;
- they use business income for charitable purposes outside New Zealand;
- they are, from 1 July 2008, not registered by the Charities Commission.

The Income Tax Act 2007 (sections CW 41 and CW 42) and the Estate and Gift Duties Act 1968 (section 73) set out a number of income tax and duty exemptions. Some of these give benefits to charitable organisations and some give benefits to people or companies who make donations to such organisations. There are, generally, three main conditions that a charitable organisation must meet to qualify for these exemptions:

- The organisation's aims and activities must be exclusively charitable.
- The organisation's income or funds cannot be used (or be available for use) to benefit any of its members, trustees or associates.
- As of 1 July 2008, charities must also be registered with the Commission to qualify for income tax exemptions

A transitional measure in budget night legislation allows for charities that have taken reasonable steps to commence the process of registration by 1 July 2008 to retain their tax exemptions.

Registered Charitable Entities

Inland Revenue accepts the Commission's decision to register a charitable entity as proof that the entity meets the definition of charitable purpose and is eligible for exemptions from income tax on all or some of its income and other tax benefits.

Once approved, registered charitable entities receive the Inland Revenue leaflet *Tax information for charities registered under the Charities Act 2005 (IR256)* advising about the exemptions available to registered charities.

Registered charitable entities that derive business income are expected to self-assess the extent to which their charitable purposes are carried out in New Zealand on an annual basis using the information provided. Registered charitable entities with non-business income will *prima facie* qualify for the income tax exemption in respect of that income.

Inland Revenue will assess applications from newly registered charitable entities and, based on information obtained from the Commission, decide whether to approve donee status for those charitable entities which identify donations as a source of income. Registered charities that already have donee status will receive a letter of confirmation from Inland Revenue. This process is automatic and outlined in paragraphs 28 and 29 of Inland Revenue's Operational Statement OS 06/02.

Inland Revenue will assess applications for 'Certificate of Exemption for Resident Withholding Tax' from newly registered charitable entities. Those entities with a

current certificate need not apply. They will be reviewed once the bulk of charities have registered.

Registered charitable entities that have GST activities, or employees, are expected to comply with the usual IRD filing obligations for those activities.

Non-Registered Charitable entities

We note that there are charitable entities that are not registered with the Charities Commission, whether by choice, or because they do not meet the Commission's criteria for registration, for example, because their funds may be applied for charitable purposes overseas.

These organisations are not within the scope of this project, but may apply to Inland Revenue for approval as donee organisations (under Section KC 5¹² of the Income Tax Act 2004).

Monitoring compliance obligations of registered charitable entities

While the Charities Commission is responsible for monitoring compliance with the stated charitable purpose of charitable entities, it is Inland Revenue that monitors charitable entities to ensure that their tax obligations are fulfilled with respect to income received.

Charitable entities may be in breach of their tax obligations by failing to pay the appropriate tax on any income they receive by the appropriate time or by claiming tax benefits where they are not eligible.

Registered charitable entities are likely to be in breach of their tax obligations predominantly by:

- applying the funds to a purpose outside the charitable purposes stated in the empowering documents; or
- applying funds to a charitable purpose but those funds are subsequently misapplied by the recipients.

It is assumed that in 2008/09, Inland Revenue's focus with respect to the monitoring of charitable entities will be to assist the Commission, where appropriate, in the processing of applications for registration of the budgeted 25,000 charities. The number of charitable entities subject to monitoring by Inland Revenue is unlikely to be significant as applications for registration are still being processed. At the date of this report, only about half (approximately 12,500) have been registered by the Commission. The intelligence available for monitoring purposes is, therefore, still being collated.

The focus for monitoring of registered charitable entities may shift in 2009/10 once most registrations are completed and additional information on these entities is

¹² Section KC 5 provides for a tax rebate in respect of donations of money of \$5 or more to a society, institution, association, organisation, trust, or fund, the funds of which are, in the opinion of the Commissioner of Inland Revenue, applied wholly or principally to any charitable, benevolent, philanthropic, or cultural purposes within New Zealand. Entities given approval are known as donee organisations or as having donee status.

available from the Commission. Monitoring activities for registered charitable entities are likely to be triggered when Inland Revenue becomes aware that the registered charitable entity is not complying with compliance obligations, or is operating outside its stated charitable purposes.

Inland Revenue will also continue to monitor non-registered charitable entities and future work is likely to focus on:

- charities with previous tax exemptions that have had an application for registration declined by the Commission
- charities with a previous tax exemption that have not registered with the Commission¹³
- charities that have applied for exemption without evidence of registration as a charitable entity or tax exempt status before 30 June 2008 but not yet registered with the Commission
- charities with a Certificate of Exemption from Resident Withholding Tax that have not yet registered with the Commission.

Where intelligence provides Inland Revenue with reason to investigate a registered charitable entity, the following might occur:

- the charitable entity might be a candidate for audit by Inland Revenue; or
- Inland Revenue may pass on the intelligence to the Charities Commission, if it is related to the performance of the Commission's functions and duties.¹⁴

Regulatory mechanisms under the Revenue Acts¹⁵

The Commissioner of Inland Revenue has a number of regulatory mechanisms available under the Revenue Acts to be used in regard to non-compliance with tax obligations. In general, however, failure to meet tax obligations may result in civil penalties¹⁶, criminal penalties¹⁷, or both. A single breach of tax obligations could, potentially result in both a civil and a criminal penalty (e.g. tax evasion is subject to both criminal and civil penalties). These are outlined in **Appendix Two**.

The penalties resulting from a breach could also result in include increased periodic audits of the charitable entity.

Working Together – the interface between Charities Commission and IRD

In the past Inland Revenue had no explicit compliance strategy for charities as there was no specific requirement under the legislation to approve these entities for tax exemption. In general, charities were treated like any other non-profit organisation entity unless they identified themselves as having a charitable purpose in order to request tax exemption (usually to obtain donee status).

¹³ If they have not registered they must return their income in their annual income tax returns and any exemption certificates will be cancelled.

¹⁴ subject to the constraints of section 81 of the Tax Administration Act.

¹⁵ See Appendix Two for list of legislation administered by IRD

¹⁶ A civil penalty is one imposed by Inland Revenue rather than a court (i.e. late filing penalties; non-electronic filing penalties; late payment penalties; and shortfall penalties).

¹⁷ A criminal penalty is one imposed by a court upon conviction of an offence (i.e. evasion; obstruction; and aiding or abetting another person to commit an offence).

It is noteworthy that some organisations would ask Inland Revenue for a view on whether they met the charitable purpose so they could receive the tax exemption. In such situations, 'letters of comfort' were issued to clarify the situation and there was an informal register noting those organisations listed as charities for the purposes of noting that they had tax exemptions. There were also a number of 'non-charities' (i.e. other non-profit trusts etc.) who would also apply in a similar manner to obtain tax exemption. This process of requesting status became more prevalent with the introduction of the Resident Withholding Tax (RWT) (in order to get an exemption the organisations needed a certificate for the bank to avoid having to pay RWT) and the introduction of GST. The GST register automatically triggered an income tax return that encouraged charities to return to IRD outlining their charitable purpose status. The 'letters of comfort' stopped being issued from February 2007 when the Charities Commission took over.

The establishment of the Charities Commission has essentially set up a formal process around an area that was relatively informal in the past (i.e. the decision on whether an entity was considered to have a charitable purpose). Although the Commission has overall accountability for that area of work Inland Revenue continues to have responsibility for deciding whether the entities are eligible for tax exemptions.

There is potential for the Commission and Inland Revenue to disagree on the definition of 'charitable purposes', particularly where an organisation that was not previously accepted by Inland Revenue as having a charitable purpose is registered by the Commission as a charitable entity.

The key overlap between the Commission and Inland Revenue is likely to be in the area of monitoring of compliance and, in this respect, both the Commission and Inland Revenue could potentially share intelligence and information (for example, at present the Commission currently downloads a list of the latest registered charitable entities to Inland Revenue on a weekly basis). Until the majority of applications received by the Commission have been processed (and annual returns submitted), however, it will be difficult for compliance work to commence in earnest.

There are unlikely to be more referrals for investigations under the new operational system as the compliance risks for a 'charitable entity' now are the same as they always were, except that Inland Revenue will now have more intelligence available when considering compliance actions and strategies. There is also the potential for both entities to work together on prosecutions of charitable entities. There is likely to be more work for IRD in the area of donations approvals. New (and significantly higher) thresholds have been set for rebates on donations made to donee organisations. This means that the risk of tax avoidance in this area is also likely to be greater and require greater scrutiny.

Decisions by Inland Revenue to prosecute are also dependent on the proportion of the income diverted to a non-charitable entity such as a non-registered sports club. Where a large amount of money was involved there would be more reason to treat the breach seriously and prosecute.

Section Three

Charitable Purposes and Tax Compliance Systems Programme

Section Three

Awareness and practice of eight pilot Māori charitable entities and areas of risk

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Section Three - Awareness and practice of eight pilot Māori charitable entities and areas of risk.

Scope

The scope of this section of the report is to present the findings of the interviews held with participating organisations with a particular emphasis on the generic risk for Māori entities with charitable status.

Format

The format for Section Three of this report is:

Summary of key information
Methodology
Profile of eight pilot Māori charitable entities
Interview Findings
Conclusions

Report Objectives

The objective is to provide an understanding of the generic risks Māori charitable entities currently face under the Charities Act 2005.

Summary of Key Information

Interviews were held over a period of three weeks and participants were provided the questionnaire in advance along with the FOMANA report dated 31 May 2008. Participant structures range from trusts to private limited liability companies. The average length of time in operation was less than five years across the group. The range for participants went from less than two years in operation to more than ten.

The majority of participants identified their level of organisational understanding of the roles of the Charities Commission and IRD as Good (range Basic to Good). More than half of the participants had attended a Charities Commission information workshop and received regular information. Participants were not clear of the relationship between the two entities.

The questionnaire used the eight risk factors identified and participants were asked to do the following for each factor:

- Describe the organisation's level of understanding;
- Describe the potential impact they thought it would have on their organisation if it was to occur; and
- Describe the steps they would take to mitigate against the risk.

The common factors participants identified as a potential impact to their organisation across all the risks were:

- Backlash from beneficiaries
- De-registration (loss of charitable status)
- Financial challenge (loss of cashflow)
- Financial viability and sustainability
- Loss of Reputation
- Loss of tax exemption
- Loss of Mana / Stigma attached
- Reputation risk-several levels, personal, professional etc

Participants identified possible mitigations to manage risks:

- Annual external audit & audit & risk committee
- Board with sound business acumen & skill
- Clear lines of delegation & ensure processes and policies are up to date
- Educate all Trustees of charities requirements
- Insurance (Public Liability, Directors etc)
- Reviewing activities against constitution, contractual obligations
- Staying within core activities
- Training of beneficiaries

Areas for improvement were identified by the entities themselves as including:

- the importance of governing documents,
- the need for awareness of their key contents by all parties concerned and
- the reliance on people (external and internal), skills, policies, processes and education to assist mitigate compliance risk.
- This was an unexpected benefit from the questionnaire and interview process.

All of those who had received and read the FOMANA report dated 31 May 2008 outlining Preliminary research on the legal framework affecting Māori Charitable Entities under the Charities Act 2005 and the Income Tax Act recommended it for use across such groups as staff, trustees, beneficiaries and other relevant stakeholders.

Methodology

The Questionnaire is the tool used to gather information from pilot participants to develop a risk assessment model for Māori charitable entities. Two main types of questions were used, they were:

- Multiple choice questions - where one of many answers needed to be selected (noting that a maximum of four choices instead of five were used); and
- Comment box questions - where comment boxes allowed for information to be entered.

The Questionnaire had a series of fifty five questions split up into seven sections as follows:

- Understanding role & functions of the Charities Commission
- Understanding role & functions of Inland Revenue Department
- Organisation's Constitution and its Requirements
- Organisation's Activities and Maintaining Tax Exempt Status
- Risk Understanding, Identification, Management, and Mitigation
- Other Organisation Data
- Participant Feedback

The Questionnaire provided the focus of a two to three hour semi-structured interview with each participant. Definitions used in the Questionnaire are as follows:

Term	Definition
Constitution	Governing documents such as the organisation deed, constitution or charter
the Act	Charities Act 2005
the Commission	Charities Commission
Organisation's	in reference to the knowledge, understanding or general practice of the organisation as a whole and not that of the interview participant(s)
Risk	The chance of something occurring that will, should the event occur, have an impact on the achievement of organisational objectives. It is measured in terms of the likelihood of something happening and the consequences if it happens.
Reputation Risk	The risk of damage to the organisation's credibility and reputation.
Compliance Risk	The risk of failing to meet government standards/laws and regulations.
Risk Management	A systematic and logical process of identifying, analysing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process in a way that will enable an organisation to minimise losses and maximise opportunities.
Stakeholders	Those individuals, groups, institutions etc (either internal or external to the organisation) who are or perceive themselves to be affected by a decision or activity.

The intention of the interviews was to have a governance member/trustee and a member of management present to provide a broader view of the level of understanding and practice within each participating organisation. Due to work commitments and tight timeframes only three of the eight participating entities were able to have both views presented at the interview.

An “assurance of confidentiality” was provided to all participating organisations in that all information received in the course of the interviews will remain confidential to the project. In addition all reports will be written in a generic manner and will not identify any particular organisation or person. The results of this research will assist in determining what risks participants currently face, what support in terms of mitigation systems and useful risk profile tools are needed and what subject matters to focus on. As a result, resources will be deployed in a more efficient and effective manner and a greater value added to Māori participants through a better understanding of their operations, compliance requirements and risk.

Once the Questionnaires and interviews were completed they were electronically stored in a database.

Profile of the eight pilot Māori charitable entities

The following are details of the participating organisations:

Legal Name of Entity	Type & Companies Register No.	Charities Commission Register No.	Nature of Activities	Size ¹⁸
Ngati Rarua Atiawa Iwi Trust Board (NRAIT)	Charitable Trust Reg No 608274	CC20248	Statutory entity and tribal lands management	Medium
Taranaki Iwi Trust	Charitable Trust Reg No 2065763	Awaiting confirmation of registration from Charities Commission	Mandated Iwi Organisation (Māori Fisheries Act)	Small
Taranaki PHO Ltd	Company Reg No 1273404	CC21526	Primary Healthcare Organisation	Large
Te Aroha Medcare Ltd	Company Reg No 1224185	Awaiting confirmation of registration from Charities Commission	General Practitioner Service	Medium
Te Atiawa Ki Te Upoko O Te Ika A Maui Potiki Trust	Charitable Trust Reg No 1800801	Awaiting confirmation of registration from Charities Commission	Mandated Iwi Organisation (Māori Fisheries Act)	Small
Te Kaahui o Rauru	Charitable Trust	Awaiting confirmation of registration from Charities Commission	Post-settlement Entity and Mandated Iwi Organisation (Māori Fisheries Act)	Medium
Te Rau Pani Māori Mental Health Trust	Charitable Trust Reg No 1546840	CC10717	Specialist Māori Mental Health Service Provider	Medium
Tui Ora Ltd	Company Reg No 899217	CC20369	Māori Development Organisation	Large

¹⁸ As per the descriptions outlined in The Review of the Financial Reporting Act Discussion Document Part II

Interview Findings

The findings of the interviews will be presented following the structure of the questionnaire which was as follows:

1. Understanding role & functions of the Charities Commission
2. Understanding role & functions of Inland Revenue Department
3. Organisation's Constitution and its Requirements
4. Organisation's Activities and Maintaining Tax Exempt Status
5. Risk Understanding, Identification, Management, and Mitigation
6. Other Organisation Data
7. Participant Feedback

Understanding role & functions of the Charities Commission

The majority of participants identified their level of organizational understanding of the role of the Charities Commission as Good (range Basic to Good). The majority were able to demonstrate their understanding by identifying such roles as:

- Registration body;
- Monitoring compliance;
- Ensure compliance with "charitable objectives"; and
- Support & education focus.

More than half of the participants had attended a Charities Commission information workshop and received regular information. Information received by participants was used most commonly:

- To ensure compliance; and
- For distributing via email and BOT reports (to network or marae or trustees).

The majority of participants identified their level of organizational understanding of the monitoring functions of the Charities Commission as Good (range Basic to High). The majority were able to demonstrate their understanding by identifying such functions and impacts as:

- Filing of accounts and/or an annual return - with an impact of audit requirements and compliance.

Generally this section was instrumental in gauging understanding of a key aspect of the Charities regime. An organisations ability to engage in this area ensured that the information needed to raise awareness (and therefore identify potential risk issues) was readily accessible and therefore ensured responses to any potential issues would be timely.

Understanding role & functions of Inland Revenue Department (IRD)

The majority of participants identified their level of organizational understanding of the role of the IRD as Good (range Basic to High). To demonstrate their understanding roles such as the following were identified:

- Pay Taxes applicable
- Role in relation to tax exemption
- Wind-up clause for IRD
- IRD-major role in tax "umbilical cord" between taxpayers-Charities Commission & IRD
- Charities Commission registration, monitoring
- Focus on requests of Charities Commission to satisfy IRD reports
- Able to audit the organisation regarding the charitable status for tax exemption
- Donee status
- Investigate activities adverse to charitable objectives of organisation

Throughout the interviews it was noted that whilst there was awareness of what the IRD had done prior to the development of the Charities Commission the relationship between the two and the boundaries within which each operate was not clear. This presents an opportunity for further communication to be developed by the two to clarify their respective roles and the situations in which they may or may not take precedent over the other.

Clarity around this issue will minimise the factors effecting compliance risk for all charitable entities.

The majority of participants identified the following as key to ensuring their organisation maintained tax exempt status:

- Activities meet requirements of constitution/deed;
- Compliance issues met;
- Maintain not for profit status;
- Registration maintenance; and
- Contractual arrangements' that support & evidence "not for profit" status.

These issues are in alignment with ensuring compliance in concept. Generally this section also highlighted an opportunity for improvement in terms of bridging information gaps. An organisations ability to be clear in this area ensured that their priorities in concept would enforce compliant activities thereby minimizing potential risk issues.

Organisation's Constitution and its Requirements

The majority of participants identified the following:

- The board's level of understanding of the charitable purposes obligations contained within their constitution as Good (range Basic to High); and
- The management's level of understanding of the charitable purposes obligations contained within their constitution as Good (range Good to High);

Whilst the range of response differentiated the two, the level of understanding was the same for both groups. Given that the board in the majority of cases is paid, a good understanding by members is expected. However given the charities compliance requirements and potential risk issues it would be much more beneficial to the participant if management's understanding was at the higher level. The use of professional advice was identified by a high majority of participants, with the most common reasons identified as follows:

- Compliance issues
- Entering into Joint ventures with other organisations
- New area of service (development)

Throughout the interviews it was noted that there was an openness and willingness to further improve systems by participants. This may be further demonstrated by the organisations willingness to participate in the project. This factor is a contributor to minimizing potential compliance risk as it indicates the right environment needed to adapt, modify and or enhance systems when and where needed to address risk exists.

Organisation's Activities and Maintaining Tax Exempt Status

Participant structures range from trusts to private limited liability companies. Core activities as outlined in Section Two of this report include mandated iwi organisations, an iwi resource management trust, a Māori development organisation, a primary healthcare organisation, a general practice and a specialist Māori mental health service provider.

The average length of time in operation for participants currently is less than five years across the group. The range for all participants is from less than two years in operation to more than ten.

As expected the mandated iwi organisations are the "rangatahi" entities in the group, although the expertise and skill at both the board and management level is very high.

Length of operation, competency of board and management, paid governance and size are factors which highlight the skill base, experience and resources available to the organisation for ensuring compliance risk is adequately addressed.

The review of participant's activities against its constitution indicated an area of potential improvement as the majority did not conduct an internal or external review. Whilst this does not mean this factor and the constitution is not looked at it does mean that regularly ensuring governing documents are in alignment with the needs of the beneficiaries, operating environments and activities are not happening systematically. This in itself gives rise to potential compliance risk.

Risk Understanding, Identification, Management, and Mitigation

The following eight risk factors were identified in the FOMANA report.

1. Operating outside “charitable purposes” as per Trust Deed or Rules

This risk exists when an organisation operates outside of the charitable purposes as set out in its constitution.

2. Misappropriation of Trust funds

This risk exists when an organisation funds are applied for purposes which were not approved and do not benefit the organisation. This could amount to criminal activity.

3. Misapplication of Trust funds

This risk exists when an organisation applies funds to a related organisation or entity for charitable purposes but those funds are subsequently misapplied by the recipient.

4. Penalties applied by IRD for failure to comply with charitable purposes

This risk exists when an organisation has not complied with its charitable purposes and faces financial penalties of interest and/or taxes that can be backdated to the period when non-compliance occurred.

5. De-registration by the Charities Commission

This risk exists when an organisation is removed from the charitable register.

6. Loss of tax exemption status

This risk exists when an organisation loses its tax exempt status.

7. Loss of reputation

This risk exists when an organisation faces reputation damage at a public level through adverse media attention.

8. Legal Action against Trustees/Directors

This risk arises as a result of non-compliance and exists when trustees/directors face legal action for their role in the breach.

Participants were asked to do the following for each factor:

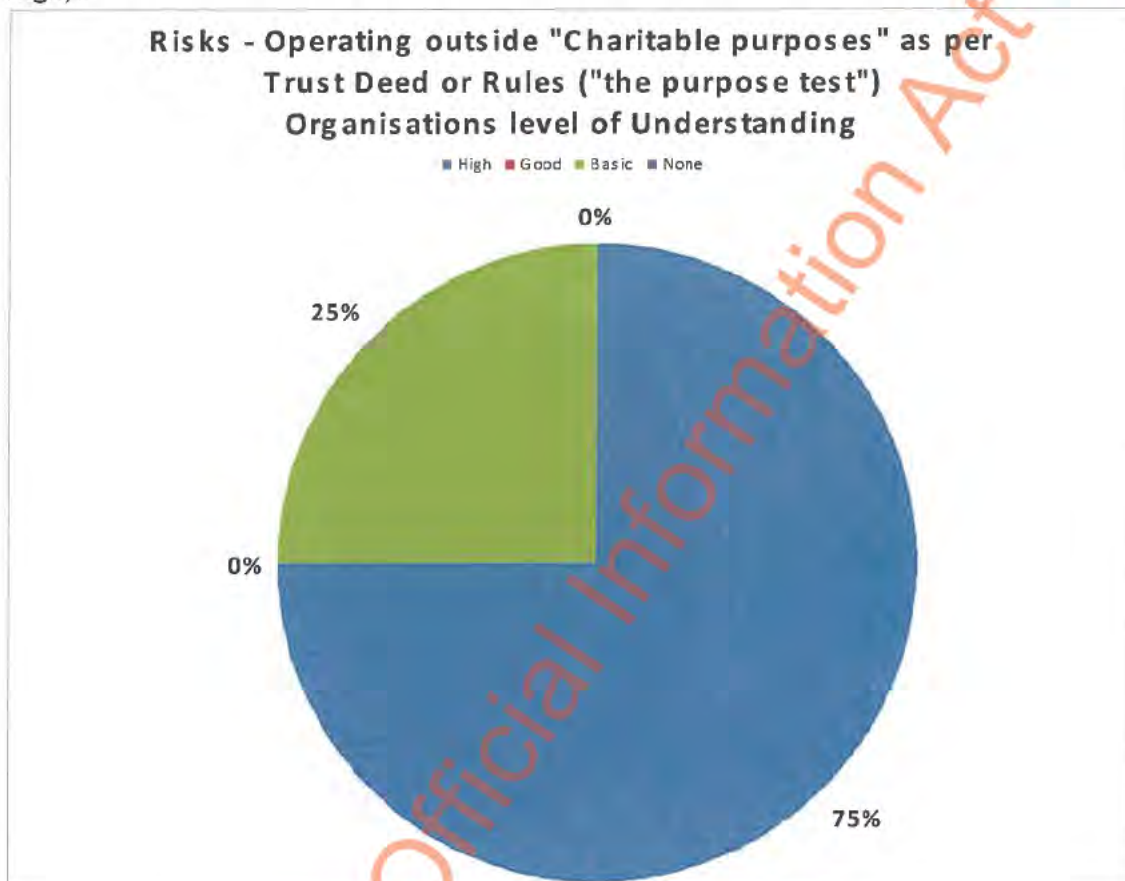
- Describe the organisation’s level of understanding;
- Describe the potential impact they thought it would have on their organisation if it was to occur; and
- Describe the steps they would take to mitigate against the risk.

The following is the consolidated results of this section of the interview.

1. Operating outside “charitable purposes” as per Trust Deed or Rules

Describe the organisation’s level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur were:

- Loss of tax exemption
- Pay back taxes and then subject to tax thereafter
- Financial challenge (loss of cashflow)
- Reputation risk-several levels, personal, professional etc
- Loss of contracts (as a result of funders not preferring a non "not for profit")

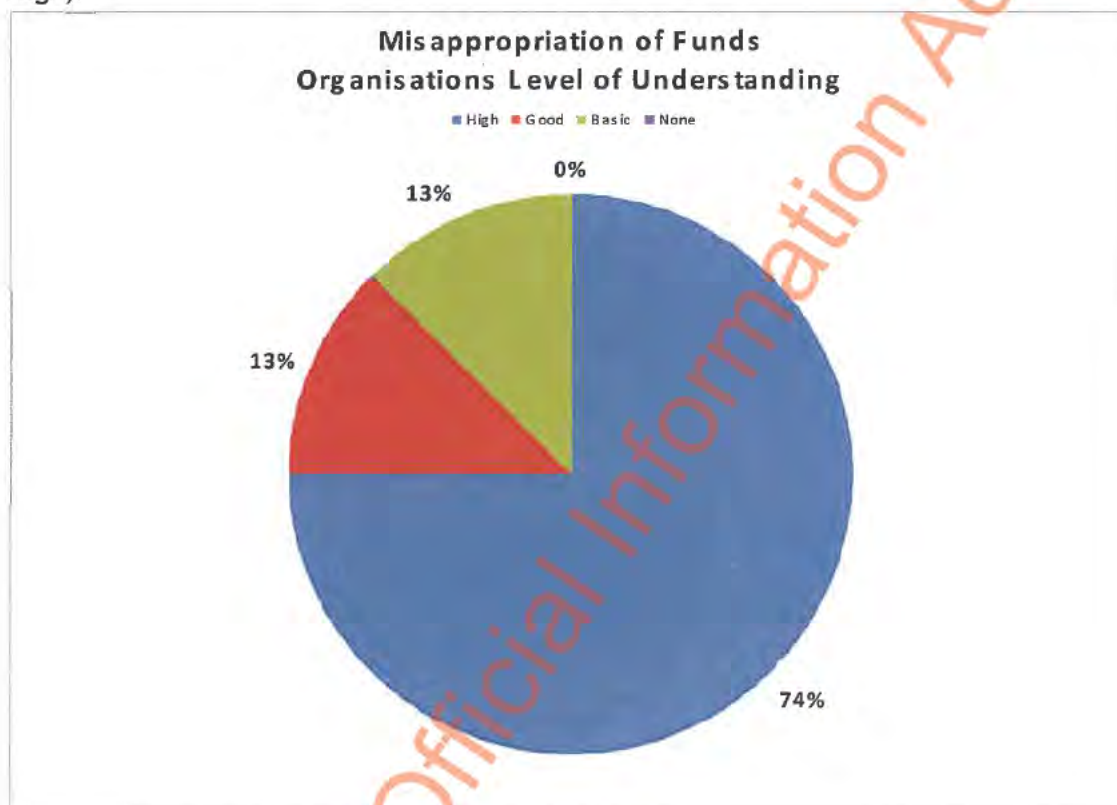
The five main steps participants identified they would use to mitigate against the risk were:

- Reviewing activities against constitution, and contractual obligations
- Ensuring processes are up to date
- Staying within core
- Educate all Trustees of charities requirements
- Follow policy to the rule

2. Misappropriation of Trust funds

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- The organisation would go broke
- May not be able to meet contractual obligations
- Impact on providers (related entities) and their services
- Staff obligations unable to be met
- Backlash from beneficiaries

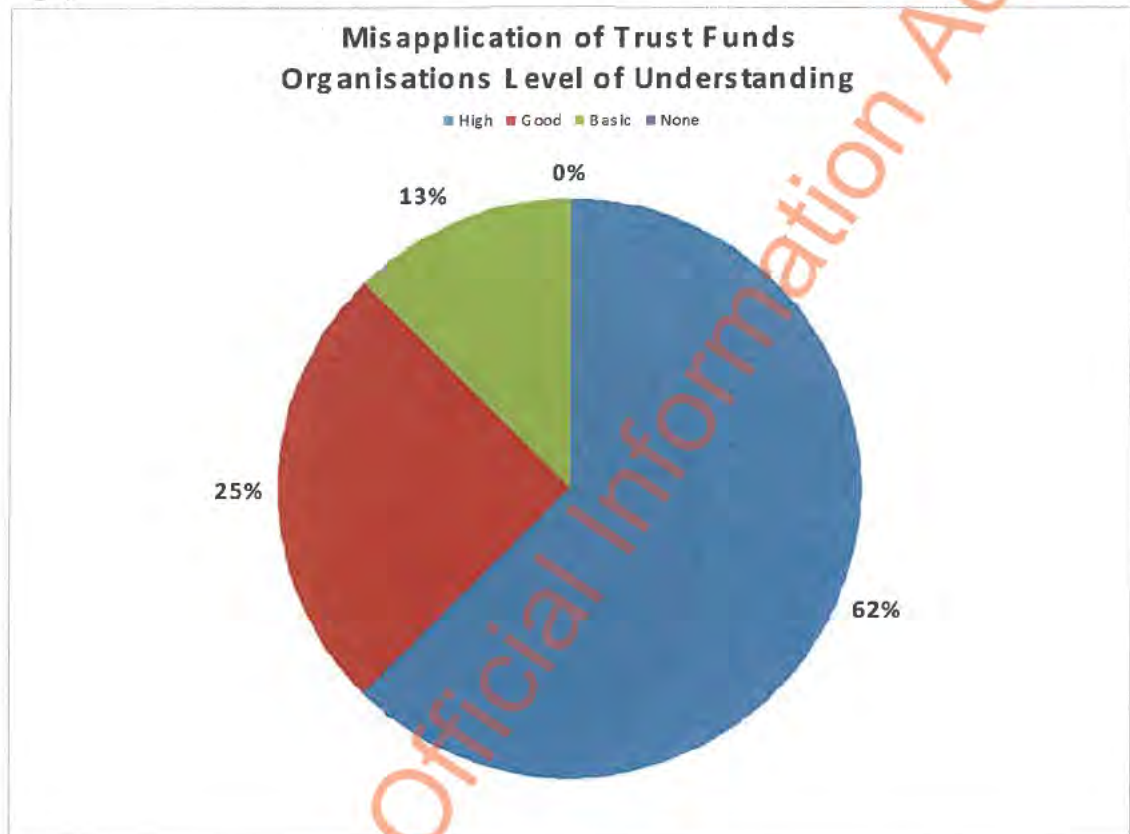
The five main steps participants identified they would use to mitigate against the risk.

- Annual external audit
- Good internal control process
- Clear lines of delegation
- Audit & Risk
- Board with business acumen & skill levels

3. Misapplication of Trust funds

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- Loss of tax exemption
- Loss of contracts (funding)
- Loss of Reputation
- Backlash from beneficiaries
- De-registration (loss of charitable status)

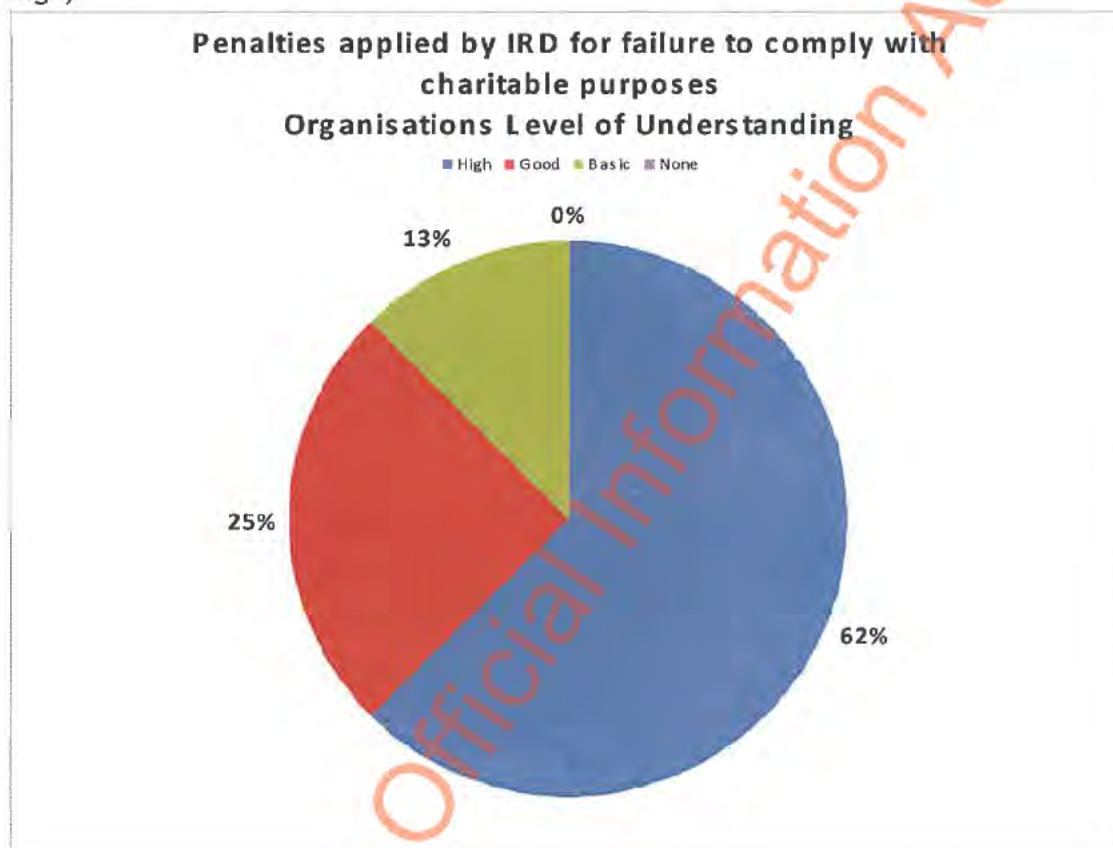
The five main steps participants identified they would use to mitigate against the risk.

- Process in place prior to distribution (docs in place to evidence acceptance of terms)
- Policies & procedures maintained
- Checking the credentials of organisations that are sub-contracted
- Training of beneficiaries
- Distributions to beneficiaries but payment to third party on invoice basis e.g. Uni Fees

4. Penalties applied by IRD for failure to comply with charitable purposes

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- Financial challenge (loss of cashflow)
- Reputation risk-several levels, personal, professional etc
- Pay back taxes and then subject to tax thereafter
- Loss of contracts (as a result of funders not preferring a non "not for profit")
- Backlash from beneficiaries

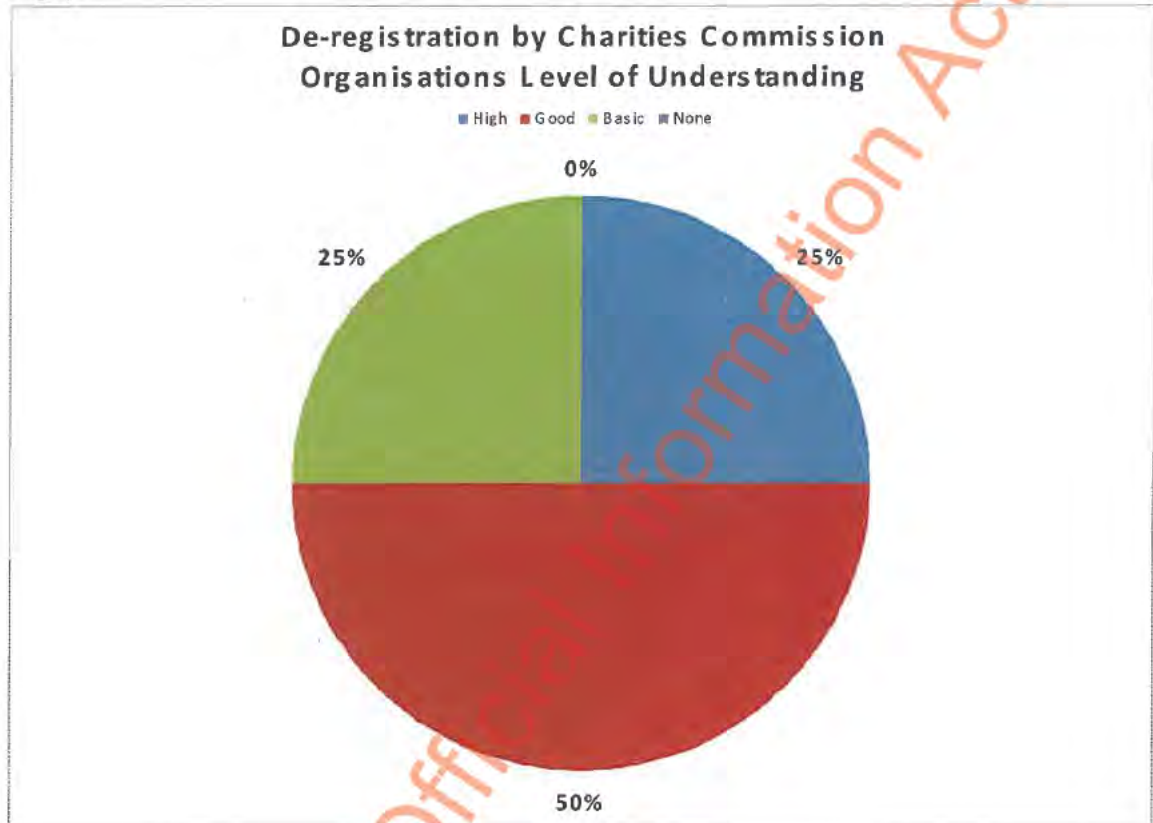
The five main steps participants identified they would use to mitigate against the risk.

- External control measures
- Staying within core
- Reviewing activities against constitution, contractual obligations
- Ensuring processes are up to date
- Good policy & procedures

5. De-registration by the Charities Commission

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was Good (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- Reputation Loss
- Pay back taxes and then subject to tax thereafter
- Financial challenge (loss of cashflow)
- Reputation risk-several levels, personal, professional etc
- Loss of Mana / Stigma attached

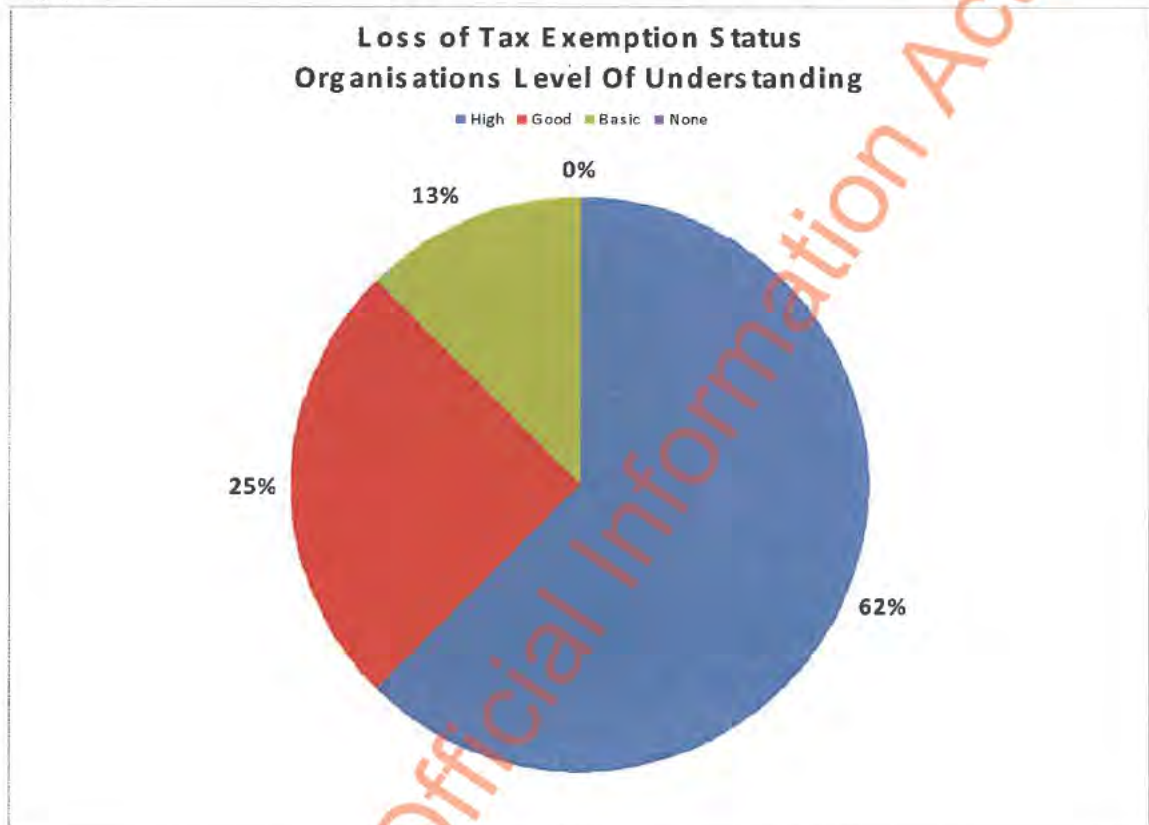
The five main steps participants identified they would use to mitigate against the risk.

- Staying within core
- Good Internal and external controls
- Annual external audit
- Board with business acumen and skill levels
- Reviewing activities against constitution and contractual obligations

6. Loss of tax exemption status

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- Financial challenge (loss of cashflow)
- Reputation risk-several levels, personal, professional etc
- Reputation Loss
- Pay back taxes and then subject to tax thereafter
- Loss of Mana / Stigma attached

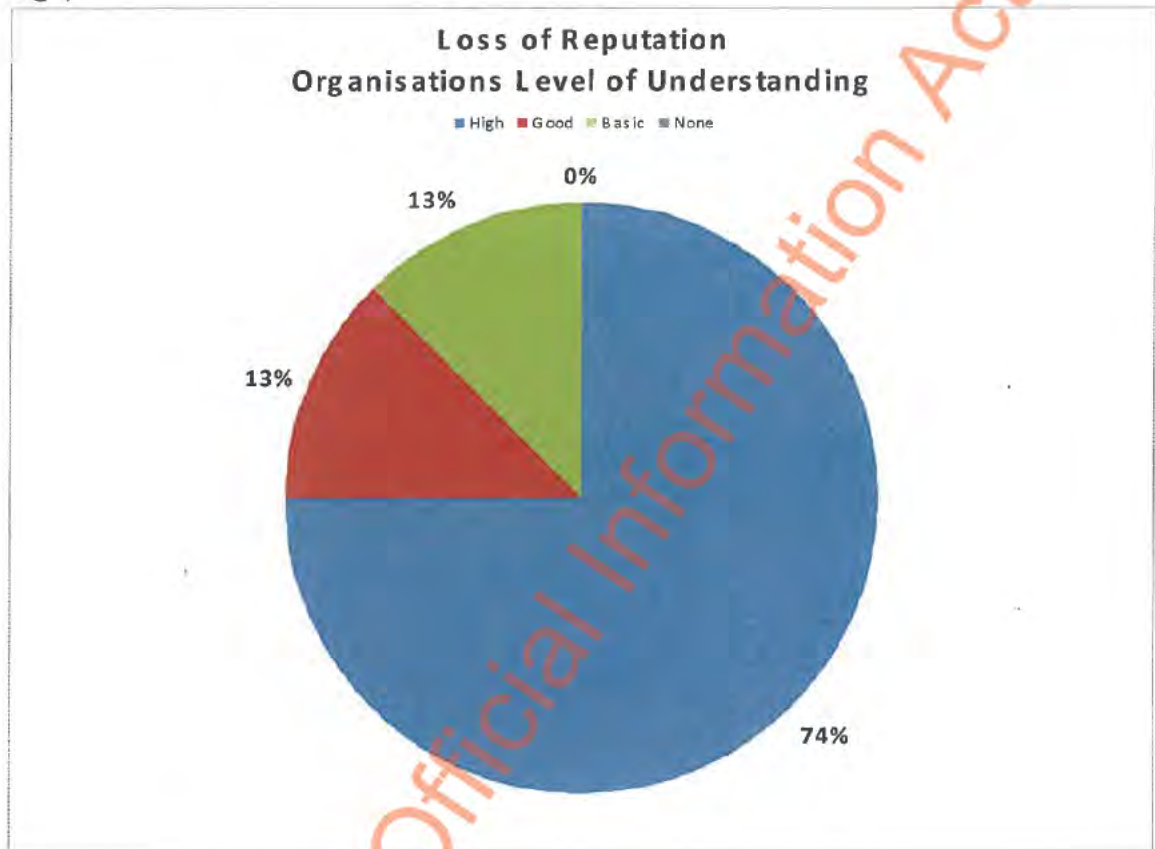
The five main steps participants identified they would use to mitigate against the risk.

- Good Internal control process
- Annual external audit
- Reviewing activities against constitution, contractual obligations
- Audit & Risk Committee
- Board with sound business acumen & skill

7. Loss of reputation

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- May lose professional & personal integrity
- Loss of mana
- May lose contracts, staff, board members
- May lose affiliated providers (GPs)
- Financial viability and sustainability

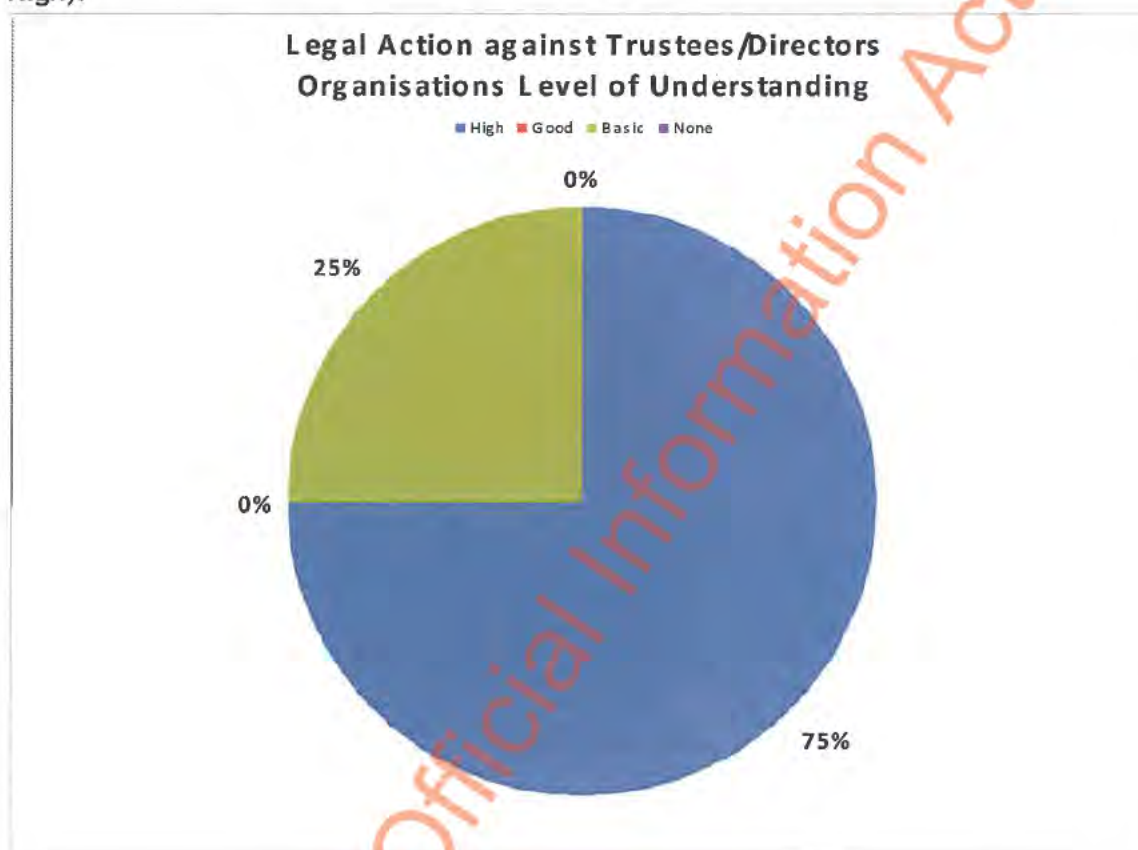
The five main steps participants identified they would use to mitigate against the risk.

- Professional communicators for advice or to front (for media etc)
- Audit & Risk Committee
- External Audit
- Policy & Procedures
- Use of external expertise

8. Legal Action against Trustees/Directors

Describe the organisation's level of understanding.

The level of understanding for this risk across the group was High (range Basic to High).



The five main factors participants identified as a potential impact to their organisation if the risk was to occur.

- Loss of mana
- Loss of governance (board) & staff
- Financial consequences for individuals
- Financial viability and sustainability
- Difficulty in securing other governance & staff

The five main steps participants identified they would use to mitigate against the risk.

- Insurance (Public Liability, Directors etc)
- Good board process (incl induction)
- Strategic planning ensure aligns with constitution
- Induction process, ensure constitution review
- Educate all Trustees of charities requirements

The most common factors participants identified as a potential impact to their organisation across all the risks were:

- Backlash from beneficiaries
- De-registration (loss of charitable status)

- Difficulty in securing other governance & staff
- Financial challenge (loss of cashflow)
- Financial consequences for individuals
- Financial viability and sustainability
- Impact on providers (related entities) and their services
- Loss of governance (board) & staff
- Loss of tax exemption
- Loss of contracts (funding)
- Loss of Mana / Stigma attached
- May lose professional & personal integrity
- May not be able to meet contractual obligations
- Pay back taxes and then subject to tax thereafter
- Reputation risk-several levels, personal, professional etc
- Staff obligations unable to be met

The main steps participants identified they would use to mitigate against the various risks were:

- Annual external audit
- Audit & Risk Committee
- Board with sound business acumen & skill
- Clear lines of delegation
- Check credentials of organisations that are sub-contracted
- Distributions to beneficiaries but payment to third party on invoice basis e.g. Uni Fees
- Educate all Trustees of charities requirements
- Ensuring processes are up to date
- Good Internal and external controls
- Good policy & procedures
- Insurance (Public Liability, Directors etc)
- Process in place prior to distribution (docs in place to evidence acceptance of terms)
- Professional communicators for advice or to front (for media etc)
- Reviewing activities against constitution, contractual obligations
- Staying within core activities
- Strategic planning ensure aligns with constitution
- Training of beneficiaries
- Use of external expertise

Throughout the interviews this section generated the most thought provoking discussion and it was often during these sessions that areas for improvement were identified by the entities themselves. In addition this area often brought home the importance of:

- governing documents,
- the need for awareness of their key contents by all parties concerned and
- the reliance on people (external and internal), skills, policies, processes and education to assist mitigate compliance risk.
- This was an unexpected benefit from the questionnaire and interview process.

Other Organisation Data

The charitable registration status for half of the participants is secured whilst the other half await confirmation. The Charities Commission registration backlog is lengthy and as a result is not a surprising factor in terms of the registration status of participants.

The table below presents the number of people involved in the participant organisations. Provided is their average and low to high range for each category.

Description of Group	Average	Low	High
Governance Paid	4	2	9
Governance Unpaid	3	3	8
Governance Total	7	5	17
Management Paid	2	0	5
Management Unpaid	0	0	0
Management Total	2	0	5
Other Paid	8	0	20
Other Unpaid		0	0
Other Total	8	0	20
TOTAL	17	5	42

As clearly indicated governance are the highest category that are not paid and are very close in numbers on average to their paid counterparts. The role of officers in the governance of the entity is critical, the personal risk they face in their role, and the time and commitment needed to minimize compliance risk for an entity warrants appropriate compensation. Without such, paid competing demands for time will take priority and adequate commitment needed to manage compliance risk will not understandably be forthcoming.

According to the potential financial reporting requirements under the Charities Act, the table below indicates the applicable category as identified by participants.

Description	Total Income Level per annum	Potential reporting requirement	Numbers
"Small charities"	less than \$100,000 of income	Entitled to report on a receipts and payments basis with no audit requirement	2
"Medium charities"	from \$100,000 to \$2,500,000	Report on an accrual basis with the account only subject to independent review	4
"Large charities"	income greater than \$2,500,000	Report based on International Financial Reporting Standards with full audit	2

The highest category for participants lay in the “medium charities” area with reported annual income from \$100,000 to \$2,500,000. It was noted that the level of income was relevant at the time as each year will vary but will be in a similar realm. In terms of compliance risk the potential reporting requirements increase as income increases. However the entity’s governing documents may still require an audit even if charitable requirements do not.

Participant Feedback

A high majority of participants identified that they had received and read (prior to the interview) the FOMANA report dated 31 May 2008 outlining Preliminary research on the legal framework affecting Māori Charitable Entities under the Charities Act 2005 and the Income Tax Act.

All of those who had received and read the report recommended it for use across such groups as staff, trustees, beneficiaries and other relevant stakeholders. Other comments about the report noted during the interviews were references to its ease of use, clarity and understandability.

The preferred methods for reporting on the finding of this research were identified by participants as:

- Written report
- Regular feedback and a executive summary of overall and individual performance and recommendation
- Two page summary
- Recommendations at FOMA conference

The benefits sought from this project as identified by participants were:

- Clarification of roles & organisation responsibilities
- Feedback on weakness
- Suggested ways of improvement
- Good practice checklists (to assist with compliance)
- Guide on best practice
- Identify what constitutes acceptable documentation for IRD audit re: misapplication
- Another set of eyes looking at compliance “charities regime”
- Continuous updating around obligations and responsibilities

Throughout the interviews it was noted that there was an openness and willingness to further improve systems and knowledge by participants. As an interviewer it was apparent that many of the issues faced by participants were similar and that there was an opportunity to gain real efficiencies and consistency (without compromising the autonomy of participants) in addressing compliance risk.

Conclusions

Throughout the interviews the need to communicate the obligations that entities faced as a result of the Charities Act 2005 was highlighted. This was mainly noted as a need for beneficiaries as opposed to just trustees. The aim was to create an informed environment so that there was no lack of clarity on what their respective entities could and could not do for them under legislation. An informed environment supports awareness which reinforces the behaviour needed to maintain compliance. This is particularly pertinent for the misapplication risk identified in the FOMANA report.

Key areas that participants identified for further training were as follows:

Area Identified	Governance Officers	Management/ Staff	Beneficiaries
Roles, Responsibilities and Obligations under the Charities Act 2005 (with particular emphasis on training to address risks factors 3 - 6);	✓	✓	
Overview of key areas of the entity's governing documents	✓	✓	
What registered charitable entities can and cannot do			✓
The benefits of charitable registration			✓
What recipients of grants from registered charitable entities can and cannot do.			✓
The application process for grants/distributions from registered charitable entities			✓

There are certain areas where relevant legislation is in conflict and there is a need to access a guide that will provide a system of determining what takes precedence. An example of a conflict is in what a distribution can and cannot be made for under the Charities Act 2005 versus The Ngati Rarua-Atiawa Trust Empowering Act 1993.

Final areas of need identified in the course of the audit are best practice checklists (to assist with compliance) for policies, procedures and systems needed at both a governance and management level. A particular emphasis on what the IRD would consider as sound practice especially when undergoing an audit was noted. There were a number of similar issues faced by participants which if addressed will assist in managing compliance risk. This opportunity and the acknowledgement of the large economic resources currently being managed by Māori have the potential to enhance Māori economic asset infrastructure, knowledge and potential. This could be done by streamlining compliance processes and systems, facilitating the development and implementation of a self assessment risk profile tool for Māori entities as well as customised training packages.

Appendices

Appendix One	Charities Commission Output Classes in monitoring compliance against charitable purposes
	OUTPUT CLASS 1.1 Registration and monitoring of charitable entities
	OUTPUT CLASS 1.2 Investigate Complaints and make enquiries about registered Charities
Appendix Two	Tax Penalties and Legislation administered by IRD
Appendix Three	Charities Commission Registration Update
Appendix Four	IRD Administrative Guidelines for Charitable organisations

Appendix One: Charities Commission Output Classes in monitoring compliance against charitable purposes

OUTPUT CLASS 1.1 Registration and monitoring of charitable entities

Figures based on number of charities registered at 30 June 2008

Performance Measures 07/08	Std/Target 07/08	Std/Target 08/09
No. Charities registered	Up to 18,000	Up to 17,000
% of completed applications for registration decided within 30 working days	85%	20-25%
No. of annual returns received and processed	Up to 10,000	8,000 - 10,000*
No. of annual returns processed within 25 working days	90%	90%
Register online and fully operational to public and charities	No less than 97% availability/month	No less than 97% availability/month
Quality audit on sample of recommendations for registration	Indicates no significant areas for improvement and only minor inconsistencies in decisions	
Six-monthly independent quality audit on sample of up to 1% of the recommendations for registration		Indicates no significant areas for improvement and only minor inconsistencies in decisions

OUTPUT CLASS 1.2 Investigate Complaints and make enquiries about registered Charities

Performance Measures 07/08	Std/Target 07/08	Std/Target 08/09
% of complaints about registered charities brought to the Commissions attention which are acknowledged and on which work is commenced to resolve the complaint within 25 working days	100%*	90%
Framework for inquiring into the conduct of registered charities is developed and approved by the Board	NA (similar target: Framework for the monitoring of registered charitable entities activities developed by 30 June 2008)	By 31 March 2009

* Slightly different target in 2007/08

Appendix Two: Tax Penalties and Legislation administered by IRD

If an organisation doesn't pay tax in full and on time, late payment penalties and interest are charged. Additionally, some actions, such as not providing accurate information, may attract shortfall penalties and/or other penalties. Failure to meet tax obligations may result in civil penalties¹⁹, criminal penalties²⁰, or both. A single breach of tax obligations could, potentially result in both a civil and a criminal penalty (e.g. tax evasion is subject to both criminal and civil penalties).

Civil Penalties:

(1) Late Filing Penalties

If tax returns are not filed on time, a late filing penalty may be applied. Entities can avoid this penalty where they have a valid reason for not filing the return on time (i.e. illness or accident, and being unable to obtain the information needed to complete the return). The amount of the penalty depends on the net income. The three penalty bands are:

- Below 100,000 (\$50 penalty);
- Between \$100,000 to \$1 million (\$250 penalty); and
- More than \$1 million (\$500 penalty).

The late filing penalty for a reconciliation statement is \$250. Once a penalty has been imposed it must be paid 30 days from the date of the statement advising of the penalty, or by the end-of-year tax.

(2) Late Payment Penalties

If tax is not paid on time a late payment penalty may be applied. The late payment penalty consists of an initial penalty for paying tax late and a monthly incremental penalty on the amount owing. The initial late payment penalties are calculated on the amount of late or unpaid tax. The initial penalty is 5% of the unpaid tax and comprises a 1% penalty the day after the due date and 4% penalty of the total outstanding amount not paid within a week of the due date.

Late payment penalties are not charged on unpaid tax of \$100 or less. An additional penalty of 2% per month and 1% (on a compounding basis) applies on the outstanding amount of any unpaid tax and penalties. Where a taxpayer is in financial difficulty, Inland Revenue may choose to remit tax or enter into payment arrangements. If Inland Revenue is contacted before the due date, the 4% penalty or the incremental late payment penalty can be waived. If Inland Revenue is contacted after the due date the incremental late payment penalty can be waived.

¹⁹ A civil penalty is one imposed by Inland Revenue rather than a court (i.e. late filing penalties; non-electronic filing penalties; late payment penalties; and shortfall penalties).

²⁰ A criminal penalty is one imposed by a court upon conviction of an offence (i.e. evasion; obstruction; and aiding or abetting another person to commit an offence).

(3) Shortfall Penalties

Failing to take reasonable care in calculating your tax can result in shortfall penalties on unpaid tax. A shortfall penalty is imposed on unpaid tax that should have been included in the original tax calculation. There are five categories of behaviour that decide the penalty to be applied. The penalties (only one of which will apply to a tax shortfall) are applied as a percentage of the tax shortfall. The penalty increases in proportion to the seriousness of the breach. The categories are:

- Failure to take reasonable care (20% penalty);
- Adopting an unacceptable interpretation (20% penalty);
- Gross carelessness (40% penalty);
- Abusive avoidance, where shortfall exceeds \$10,000 (100% penalty); and
- Evasion (150% penalty).

Aiding and Abetting

These do not include aiding and abetting penalties or obstruction penalties (if you obstruct IRD in calculating your tax income an additional penalty of 25% on the unpaid tax can be imposed on you. Penalties can be reduced if you disclose the tax shortfall. However timing of the disclosure is critical.

Criminal penalties for knowingly offending include:

- Imprisonment for a maximum of 15 years; and
- Up to \$50,000 for each offense

LEGAL RESPONSIBILITIES as stated in IRD Annual Report 2007, Figure 40, page 124

Inland Revenue administers the following main Acts:

- Child Support Act 1991
- Estate and Gift Duties Act 1968
- Gaming Duties Act 1971
- Goods and Services Tax Act 1985
- Income Tax Act 1994
- Income Tax Act 2004
- Stamp and Cheque Duties Act 1971
- Student Loan Scheme Act 1992
- Tax Administration Act 1994
- Taxation Review Authorities Act 1994

KiwiSaver Act 2006 Parts 1 to 3 and Schedule 3 and provisions in Part 5 as authorised by the Prime Minister. The Ministry of Economic Development administers Part 4 and Schedules 1 and 2 and provisions in Part 5 as authorised by the Prime Minister. See section 224 of the KiwiSaver Act.

Aspects of the Parental Leave and Employment Protection (Paid Parental Leave) Act 2002 are administered by Inland Revenue under authority delegated (under section 71ZA of that Act) by the Chief Executive of the Department of Labour.

Appendix Three: Charities Commission Registration Update

Date	Number registered	Processing Time
25 January 2008	2,142	currently reviewing applications received from 29 August.
Feb 2008	3,121	reviewing applications received from early November 2007
29 April 2008 ²¹	4,990	reviewing applications received from 30 January 2008.
19 May 2008	5,902	Currently making initial reviews of applications received from 26 Feb 08.
4 August 2008	10,260	Currently making initial reviews of applications received from 19 May 2008
8 September 2008	12,119	Our registration analysts are currently making initial reviews of applications received from: 12 June 2008
15 September 2008	12,470	Currently making initial reviews of applications received from: 19 June 2008*
		*Remember: many straightforward applications, once they reach the front of our queue, are processed within several weeks. However, if there are any complex issues involved, or the application requires additional work by a senior analyst to confirm an analyst's initial view, it will take longer to complete the process - currently several additional months.

1 JULY 2008 - "BUSINESS AS USUAL"²²

...Our early estimates of there being around 25,000 charitable organisations in New Zealand appear to have been reasonably accurate - in total, we have received almost 24,000 applications (about 1,500 of those in the last two days of June).

It is likely that it will take us to the end of the year to process all of them, so please be patient - and remember that where necessary, we can backdate properly-completed applications.

SNAPSHOT Overview of types of charities registered as at 31 August 2008²³

The "big three" most common:

Sectors - Education/training/research, Religious activities, Other

Activities - Other, Provides religious services/ activities, Provides services (e.g. care/ counselling)

Beneficiaries - General public, Children/young people, Other charities

Areas of operation were as follows (note: the total is greater than the total number of registered charities, as some organisations tick two or more categories on their application):

²¹ Update 29 - April 2008

²² <http://www.charities.govt.nz/news/updates/july-2008.htm>

²³ www.charities.govt.nz/news/updates/september-2008.htm

New Zealand	
Auckland - 1,991	Northland - 626
Bay of Plenty - 780	Otago - 770
Canterbury - 1,412	Southland - 427
Chatham Islands - 21	Taranaki - 392
Gisborne - 220	Waikato - 928
Hawkes Bay - 525	Wellington -
	Wairarapa - 1,261
Manawatu - Wanganui - 652	West Coast - 248
Nelson - Marlborough - Tasman - 545	Nationwide - 2,786

Overseas	
Africa - 197	North America - 116
Antarctica - 18	Oceania - 322
Asia - 325	South America - 112
Europe - 159	

CIRCUMSTANCES THAT PREVENTED APPLYING BEFORE 1 JULY?

A change has been made to the Income Tax Act, for charitable organisations that ran into difficulty with completing their registration application before 1 July 2008, owing to circumstances that may be beyond their control. It will not cover organisations that merely did not get around to applying for registration before the deadline.

The legislation provides a limited discretion for Inland Revenue to preserve the tax-exempt status of charities that were not able to apply to register with the Charities Commission before 1 July 2008, but who can prove to IRD that they began the process of preparing their application before that deadline.

Guidelines about what Inland Revenue requires as proof of having begun the process of preparing an application for registration are available on [IRD's website](#). See next Appendix for a copy.

Appendix Four: IRD Administrative Guidelines for Charitable organisations

Administrative guidelines about the tax position for charities that have not completed the process of registering with the Charities Commission by 1 July 2008²⁴

These administrative guidelines are intended to provide clarity about the tax position for entities that have not completed the process of registering with the Charities Commission by 1 July 2008. The guidelines describe:

- what happens to tax exempt and/or gift duty exempt status if a charity hasn't completed the Charities Commission registration process by 1 July 2008
- what a charity needs to do to retain tax exempt and/or gift duty exempt status
- how a charity can prove it has taken "reasonable steps" to register with the Charities Commission
- what won't count as proof that a charity has started the registration process
- answers to common questions for charities that have not completed the registration process with the Charities Commission by 1 July 2008.

The 1 July 2008 law change

Under law that comes into force on 1 July 2008, a charity must be a "tax charity" to be entitled to the charitable purpose income tax exemption and for gifts to that entity be exempt from gift duty.

Charities that do not register by 1 July 2008 may be subject to income tax and will therefore no longer be exempt from resident withholding tax in their investment income.

The Charities Act 2005 gives powers to the Charities Commission to backdate registration to the date on which a properly-completed application was received. There is more information about this on the [Charities Commission's website](#).

Transitional measures

Budget night legislation, section CW 41(5)(ii) of the Income Tax Act, contains a transitional measure for entities that have not completed the registration process by 1 July 2008. Entities that qualify will be treated as income tax exempt and gifts made to them will not attract gift duty.

The legislation preserves the income tax-exempt status of organisations currently exempt as a charity that can show that they have started to take reasonable steps in the process of preparing an application for registration before 1 July 2008, and that intend to complete the registration process.

The transitional measure is intended to apply to entities that need more time to complete the registration process, where those entities have genuinely tried to comply with the registration requirements, rather than to those entities that have just not turned their mind to the issue or decided not to comply. The measure is to be applied in limited circumstances.

²⁴ www.ird.govt.nz/charitable-organisations/chart-orgs-admin-guidelines-registering.html

We intend to review, by 31 March 2009, the income tax exempt status of those charities that have not registered with the Charities Commission or have not taken reasonable steps to start the process of registration.

What a charity needs to do to retain tax exempt and/or gift duty exempt status

The new section CW 41(5)(ii) of the Income Tax Act 2007 deals with transitional tax consequences for charities that need more time to complete the registration process. It applies to entities that:

- started, before 1 July 2008, to take reasonable steps in the process of preparing an application for registering as a charitable entity under the Charities Act 2005, and
- intend to complete the process of preparing an application in future, and have not been notified by the Inland Revenue that they are not a "tax charity".

The entity must first meet the technical requirements of a charity as set out in sections CW 41, 42, and 43 of the Income Tax Act.

Entities that meet the requirements of this transitional measure will retain their exemption from income tax and any gifts they receive will continue to be exempt from gift duty. This also means that for those entities that have been issued with a Certificate of exemption from resident withholding tax (COE), the exemption will continue to apply. If the application for registration as a charity is declined, the above exemptions will cease to apply from 1 July 2008.

Proving a charity has taken "reasonable steps" to register with the Charities Commission

A "process" is defined as a systematic series of actions directed to some end, in this case, being a properly completed application for registration.

An application for registration with the Charities Commission by 1 July 2008, whether online or otherwise, will be regarded by Inland Revenue as constituting a reasonable step in the process.

Applications by 1 July 2008 aside, Inland Revenue requires documented evidence that, by 1 July 2008, a charity has taken reasonable steps in the process of preparing an application for registration. For example, any board minutes, resolutions recording formal decisions and commitments to register (with timeframes given), any documented decisions to take active steps towards preparing a proper application (such as a recorded decision to instruct solicitors/advisors or other third party to begin preparation).

What your charity needs to give the Charities Commission

Section 17 of the Charities Act 2005 sets out what is required by an application for registration with the Charities Commission. The application must:

- be sent or delivered to the Commission and must be in the prescribed form, and
- be accompanied by a document in the prescribed form, signed by, or on behalf of, every person who is an officer of the entity, that contains a

certification that the person is not disqualified from being an officer of a charitable entity in relation to the entity under section 16, and

- be accompanied by a copy of the rules of the entity, and
- be accompanied by the prescribed fee for the application (if any), and
- contain, or be accompanied by, any other prescribed information or documentation.

Starting the process of registration must include starting any of the steps to meet the application requirements. The process above can also be carried out [online with the Charities Commission](#).

How to prove a charity has started the registration process

The following actions will be considered to be evidence of preparing an application for registration. Provided they commenced before 1 July 2008 and are supported by documentary evidence:

- request for professional advice to commence registration of an existing charity
- request for professional advice to draft rules/charter for an existing or proposed charity that will then be registered
- charter or draft rules are in the process of being prepared by an organisation that intends to register as a charity
- preparation of registration application form, even if not yet fully completed, that clearly shows intention to register
- commenced online registration with the Charities Commission, even where the submission stage has not been reached.

Each of these actions must include copies of file notes, draft copies of rules/charter, committee minutes, director or trustee resolutions, draft copy of registration form, a letter from a third party that the process has started for registration, or similar evidentiary documentation, if applicable. All documentary evidence must be dated. For a commenced online application, the record will be an electronic document held by the Charities Commission and the applicant will also have a log-in code.

Case by case assessment will be made of an entity's actions to determine whether a real intent can be shown. This will include consideration of an intention to make an application to complete the registration process within a reasonable timeframe.

What won't count as proof a charity has started the registration process

None of the following on their own will normally be considered sufficient evidence in preparing an application for registration by 1 July 2008:

- a call to Inland Revenue/advisor/Charities Commission expressing an intention to form a charity
- any general information requests about the registration process
- a call to Inland Revenue/advisor/Charities Commission for information about registering an existing charity
- request to Inland Revenue/advisor/Charities Commission to send registration forms
- "do I need to register" request to Inland Revenue/advisor/Charities Commission
- letter from Inland Revenue that an organisation needs to register

- downloading registration information and/or form from Charities Commission website.

A letter from Inland Revenue that an existing operating charity is exempt from tax will no longer have effect from 1 July 2008 if the registration process has not started.

A genuine enquiry to Inland Revenue to clarify an organisation's current tax status may indicate the start of a registration process if the purpose of that registration is solely to be treated as a tax charity. This will be determined on a case by case basis.

Questions and answers

What actions would prove a charity is serious about registering in future?

There should be a stated intention and commitment to register with the Charities Commission. An entity must have a genuine intention to complete the process of a Charities application in the near future.

An entity is required to specify the time period in which they intend to submit an application to the Charities Commission and complete the registration process.

What if a charity withdraws their application?

If an entity has submitted an application prior to 1 July 2008, but then withdraws the application, this on its own, is not an indication of having an intention to complete the process. An entity needs to satisfy the criteria set out above to qualify for the transitional measure.

What happens if an entity has started the process but has not submitted an application for registration within a reasonable period?

An entity would continue to have tax charity status provided the entity can demonstrate that it intends to complete the registration process within a reasonable timeframe, as set out in the administrative guidelines criteria.

What happens if an entity has submitted an application for registration and the registration had been declined, or the entity has been previously declined charitable status by Inland Revenue?

If the entity is found not to have a charitable purpose then the entity would fail to meet the requirements of the charities commission and income tax exemption.

BUT

If an entity is found not to have made a properly completed application, and intends to remedy this, by submitting a further application to the Charities Commission within a reasonable timeframe, Inland Revenue will consider the transitional measures criteria. Inland Revenue needs to be satisfied that all reasonable steps have been taken, and documented evidence provided, with a clear intention to complete the registration process within a reasonable timeframe

Does the entity need to register?

A non-profit body is any society, association or organisation, whether incorporated or not, that is not carried on for the profit or gain of any member, and whose

rules/constitution do not allow money, property, or any other benefits to be distributed to any of its members.

Non profit organisations that do not qualify for an income tax exemption can qualify for a deduction against their net income. The deduction available to non-profit bodies is for an amount equal to the lesser of \$1,000, or the amount that would be the net income of the society, association or organisation.

A non-profit body must have written rules in order to qualify for an income tax exemption or deduction. These rules give an organisation a set direction and purpose. If an organisation does not have rules or a constitution they will not qualify for an exemption or deduction, because there is nothing in writing to bind members to a particular course of action and ensure its funds are used in ways which are in line with its aims.

A charitable organisation will be required to be registered by the Charities Commission to be eligible for an income tax exemption. The requirement to register with the Commission will have no effect on other non-profit bodies that are not registered charities, although non-profit bodies will continue to be eligible for the \$1,000 deduction from income.

An organisation is working to be group registered as a group, what is the effect of this?

Group registration with the Charities Commission will cover all organisations that are a party to that group registration and the Commission will notify Inland Revenue of the names of those organisations included in the group registration.

The organisation has numerous branches or associations that will be covered by a parent body's registration - what is the effect of this?

When sending an application for the transitional measure, please inform us of all the entities that your application relates to. The transitional measure will apply to all the entities that are covered by the registration of the parent body provided they are all operating under the parent body's rules or constitution.

A marae has started working through an application last year. Many people are required to be consulted, so the application hasn't been sent in to the Charities Commission yet. Do the transitional measures apply here?

Yes, they should apply in this situation. The entity would need to provide Inland Revenue with documentation of what steps have been taken, and a timeline of when it intends to have the process completed. Include anything that may be relevant. If we need more information we will contact you.

An application has been sent to the Charities Commission - if it isn't approved by 1 July 2008 will the entity have to apply for the transitional guidelines?

No, the transitional guidelines are not intended for organisations that have already applied to the Charities Commission. When the Charities Commission approves your application they may backdate the registration to the date you applied. Please refer to the [Charities Commission website](#) for more details.

What is the tax position if an application for registration is filed and approved after 1 July 2008?

We will consider the circumstances on a case by case basis. If the entity can show it started the process of registration before 1 July 2008 then the transitional measure will apply.

Applications for transitional guidelines should be sent to:

Inland Revenue

PO Box 761

Waikato Mail Centre

Hamilton 3240

Other pages in: [Charitable organisations](#)

- [Income tax, tax rates and exemptions](#)
- [Charitable organisations for the purposes of Student Loan Scheme 1992](#)
- [Registration of charities](#)
- [Filing income tax returns](#)

Bibliography and Information Sources

Agency or Author	Title of Publication or Website	Date
Charities Commission	Statement of Intent 2008-2011	2008
	Information Sheet Form 4 Annual return for a charitable entity	June 2008
Inland Revenue	Tax and Charities - A Government Discussion on Taxation Issues Relating to Charities and Non-Profit bodies.	2001
	http://www.ird.govt.nz/charitable-organisations/	
Charity Commission for England and Wales	Tax information for charities registered under the Charities Act 2005 (IR256)	
	Sound strategy for effective delivery: A Report on the views of key external stakeholders on progress since 2004	Dec 2006
Panel on the Nonprofit Sector Report (US)	Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations www.nonprofitpanel.org/report/principles/Principles_Guide.pdf	October 2007
Canada Revenue Agency	Charities Good Practice Checklist (Canadian) www.cra-arc.gc.ca/tx/chrts/chcklsts/menu-eng.html	
Voluntary sector initiative Joint Regulatory table	Frequency of Various Types of Non-Compliance by Registered Charities	
Charities Review Council, Minnesota, USA	Survey Of Minnesotans' Charitable Giving Habits And Perceptions Of Charitable Organizations	July 2007
Other	The Review of the Financial Reporting Act Discussion Document Part II	

Information Sources for Effective Governance

Resources that offer valuable information on this with a NZ perspective are: provided on the following <http://www.community.net.nz> website as selected publications and resources about best practice in governance and management of not-for-profit organisations.

Effective governance of Māori organisations (details)

Te Puni Kōkiri's website for effective governance education, designed to help trustees and directors of Māori organisations with their responsibilities and role as guardians and leaders.

Date updated: 30 June 2008

Indigenous Concepts of Governance (details)

This paper by Robyn Kamira looks at indigenous models of governance and their relevance in contemporary settings, and in particular in relation to control of information by Māori in the health. Date updated: 30 June 2008

Nation Building and Māori Development - The Importance of Governance (details)

In this paper, Materoa Dodd of School of Māori and Pacific Development, University of Waikato, outlines the importance of good governance in developing effective structures for Māori. Date updated: 30 June 2008

Managing Well resource catalogue (details)

The Managing Well resource catalogue (online in the Community Centre section of this web site) includes references or links to manuals, websites, information sheets, books, and other documents. Date updated: 1 April 2008

Committees, roles and meetings (details)

This section of SPARC's Club Kit provides an overview of who organisations will need to form a committee, their roles and how to run successful meetings. Date updated: 9 October 2007

Six key competencies which lead to board excellence (details)

Six page article that identifies competencies which lead to board excellence. Based on a five year study of 20 U.S. nonprofits and schools by Richard Chait, Thomas Holland and Barbara Taylor. Date updated: 4 December 2006

Simple Policy and Procedures Manual (details)

Why you need them, with examples of policies and procedures. Updated: 4 December 2006

Board development workbooks (details)

Downloadable workbooks on developing job descriptions for board members, developing boards, developing policies and other topics. Date updated: 27 November 2005

Good Governance Guides (details)

Chartered Secretaries New Zealand has prepared a series of Good Governance Guides in the area of corporate governance with the intention being to "provide value to individuals as a starting point. Date updated: 19 November 2005

Nine Steps to Effective Governance (details)

This practical SPARC governance resource covers a wide range of governance functions: defining the role of the board; induction; board meetings; planning; board and CEO evaluation; and succession. Date updated: 10 November 2005.





Monitoring Report

for Installment Installment Two report due on 30/09/2008

APPLICATION/ORGANISATION DETAILS

SmartFund Ref: NDOE/HO.374.20209.16081
 Project Name: FOMANA Charitable Purposes Project
 Organisation Name: FOMANA Capital Ltd
 Address: 108 The Terrace,
 Wellington,

MONITORED DETAILS

Short Outcome	An informed understanding of the scale of affected Maori entities under the Charities Act 2005.
Output	Research reports completed on generic risk for Maori entities with charitable status.
Success Indicators	Research report completed within budget and timeline.
Status	Achieved
Output	Detailed research report completed on the requirements of the new charities and tax compliance framework.
Success Indicators	Audited accounts provided by deadline.
Status	Achieved
Output	Research report and profile completed on each pilot entity outlining areas at risk of compliance with the charities/tax regime.
Success Indicators	Research report completed within budget and timeline.
Status	Achieved
Output	Audited set of accounts completed for period ending 30 June 2008
Success Indicators	Provision of audited accounts for period ending 30 June 2008
Status	Not Achieved

Risk Monitoring

Risk	The demand for the new standards and audit models for Maori is not met.
Risk Comments	The research report goes some way to developing new standards and an audit model for Māori organisations.
Status	Not Applicable

ASSESSOR COMMENTS

A comprehensive report canvasses: risks for Māori entities with charitable status; the roles of Charities Commission, IRD and their interface; and eight Māori charitable entities, their understanding of the new regime, their constitution, practises and policies for tax exemption status. The audited accounts have not been provided which will be followed up with Fomana.

QUALITY ASSESSOR COMMENTS

Confirm receipt of report as stated in assessor's comments. FOMANA states that its audited accounts are still with its auditors and will be made available shortly. Other than this all appears in order with the project.

INVESTMENT MANAGER COMMENTS

Apart from audited a/c's which are currently with their Accountants and should be furnished within 2 weeks, the Report meets our requirements

Assessor: _____

Date: _____

Quality Assessor: _____

Date: _____

Investment Manager: _____

Date: _____

14 OCT 2008



MĀORI GLOBAL AGRIBUSINESS – TEKAU PLUS

SIX-MONTHLY REPORT

30 June 2008

Introduction

This report is a contractual requirement and is intended to provide assurance of the progress of the project, and in particular of delivery on the contract between Te Puni Kokiri and the Partners for the project – the Māori Trustee, Federation of Māori Authorities and Poutama Trust (described as the Business Advisory Group) and known as the Tekau Plus Board.

Reporting

The Māori Global Agribusiness contract (in Schedule C) requires:

The six-monthly reports will report on:

- a. the outputs and success indicators in Schedule A (with specific Reference to the milestones and indicators in the three year work plan attached as Schedule G)
- b. the financial requirements in Schedule D and Schedule E
- c. the work of the Overview Panel
- d. the outputs, outcomes and processes set out in the three year plan

This report is in several parts:

1. Overall description of progress ((c) and (d))
2. Description of progress against the 3 year plan (a)
3. Financial reports (b)
4. Key documents

Tekau Plus Summary Highlights

- Strong governance and management achieved with robust systems and processes for decision-making and accountability
- The project is on track with the contractual requirements including:
 - 3 Year Plan
 - Quarterly Report to 30 December 2007
 - Quarterly Report to 31 March 2008
- The project has been branded as Tekau Plus with a game plan of "in 10 years having 10 businesses with \$10m each in foreign revenue"
- The branding and logo have been agreed, and "Export Excellence" has been trademarked.
- Te Puna – the strategic framework has been produced to underpin the work
- Framework and criteria for selection and cluster development has been developed
- The "Export Excellence" document providing the Tekau Plus programme information and application requirements and other promotional documentation have been produced and disseminated to targeted groups and stakeholders
- The project has achieved significant acknowledgement from key stakeholders and has attracted support, including sponsorship and resources for events and delivering services:
 - NZTE has made an offer to provide tailored assistance to 20 Māori businesses through Tekau Plus
 - MFAT and ForST have indicated support, and interest in tailoring assistance
 - PGG Wrightsons has provided sponsorship for the workshops to date, and other corporate businesses have indicated interest
- Momentum and awareness is building among stakeholders and potential Māori export businesses, with work targeting senior officials in government sector, private sector and research agencies including (CRIs and Universities), and Māori agribusinesses
- Two workshops have been held on exporting:
 - Value Chain and Supermarkets
 - NZ China FTA and Value Add enterprise
- A further workshop in conjunction with Victoria University is in preparation for the first week of July 2008, and a national symposium in September
- Potential clusters and lead businesses have been identified
- Potential lead advisors have been identified

Overview and Progress

Governance and Management

On 8 October 2007 the contract with TPK was signed. At that time the Business Advisory Group was established with the members being John Paki (Māori Trustee), Paul Morgan (Federation of Māori Authorities) and Richard Jones (Poutama Trust). The agreement between the three parties was captured by way of a Memorandum of Understanding.

An Operating Charter was developed in October 2007, and finalised in February 2008. This includes key strategy information, and arrangements on governance and management issues including conflict of interest, funds administration and delegations, and minuting, reporting and accountability mechanisms. This was approved by the Business Advisory Group on 18 February.

The key documents for managing the project were approved at that meeting. This includes the conflict of interest registration, contract administration and financial reporting templates and the contract with FOMANA, and memoranda of service provision with the Māori Trust Office, FOMA and Poutama Trust.

In May a fundraising and sponsorship policy was developed to guide the Tekau Plus in terms of the need for diversified income streams (eg for conferences and events) in balance with the overall strategy and ethical requirements.

The Business Advisory Group now operates under the name of the Tekau Plus Board. Fomana Capital and Māori Trust Office provide management support.

As required under the contract, key reporting requirements have been: 3 Year Plan, December 2007 Quarterly Report and a March 2008 Quarterly Report (see 15 April Minutes).

Strategy

The strategy work has included the development of the wider planning and discussion, informed through conversation with key stakeholders, and research (see for example 14 Feb Board papers) and the discussions which are noted in the Communications section, below. A three year strategic business plan was finalised in February 2008.

The strategic approach outlined a number of key areas to work on:

- Free Trade Agreements, particularly China
- Tekau Plus programmes
- Integration with other programmes (eg Beachheads)

A key to the strategy development is in getting buy-in. There has been significant support for the concept. Through the meetings with key stakeholders there has been strong buy-in to the concept and the strategy. For example:

- NZTE – with offer of resources and assistance in December to Tekau Plus, and in 30 April of assistance to clusters
- PGG Wrightsons sponsorship at Tekau Plus events and sponsorship of scholarship

The strategic alignment of the Tekau Plus strategy and Government priorities is strengthening

The Prime Minister noted the need to

- ... back science and innovation in the pastoral and food industries – we need smarter, more innovative products out of our major export sector.

The Minister of Finance's Budget speech highlights:

- the Government's Beachheads programme that is now starting to show its value in many different global markets.
- There has been a very positive business response to the signing of the FTA with China – and a number present in this room today were part of the significant business delegation which came with me to Beijing in early April.
- tax credit for research and development ... designed to help address the single most important shortcoming in New Zealand R&D, which is the relatively low level of private sector investment.

Communication

A communications plan was developed, with the early focus on commencing dialogue with key government groups (20 October 2007 Minutes). A key platform for Tekau Plus has been the face to face meetings with key stakeholders. This has included government (particularly NZTE, FORST, MFAT), universities, CRIs, as well as Māori organisations and non-Māori organisations, such as local government agencies, strategic business partners (eg PGG Wrightsons and Kiwibank,). (See for example 18 February, 20 March 2008 Minutes).

Further work on branding and developing publicly available material has continued. The main documents produced for stakeholders have been the Te Puna offer document (March 2008), information sheet (15 April 2008) and the Tekau Plus Export Excellence booklet in April 2008.

Other publicity has included an article by Phil Lewin in the DominionPost (Saturday 12 April) which provided positive profile for Tekau Plus. (Noted in papers for 23 April 2008)

The plan also included the need to hold and attend hui and meetings. This has a strategic context in terms of bringing on board the right organisations and people, but is also part of the communications and open process.

Several conferences have been attended and the Tekau Plus concept discussed. This includes for example, the Agribusiness Conference in Christchurch in November 2007, the FOMA conference in October, the FOMANA Capital launch in December, the Beachheads Conference in February 2008 and the launch of the NZ Fastforward programme in March.

A key output is also to hold workshops and conferences. To date two workshops have been held:

- Tom Reardon on "Value Chain, Super markets and Emerging Market" on 12 March 2008 (29 attendees)
- "NZ China FTA and Māori Exporter and Value Add enterprise" on 30 April 2008 (42 attendees - An appraisal of this was provided at the Tekau Plus Board meeting of 19 May 2008).

Work continues for the next workshop in early July and a symposium in September.

Analysis and Research

The on-going research is a core component of the work of Tekau Plus. It can be divided into three types:

- general and background on exporting and value chain analysis
- developing Tekau Plus strategy
- operational requirements for Tekau Plus

To date much of the research has been aimed at generic issues, and developing the knowledge base for Tekau Plus. This has included studies and information gathered by team members. This has included for example:

- China FTA – FOMANA (23 April 2008 papers)
- Bridging the gap from technology to products (23 April 2008)
- Introduction to China - IP issues (see 15 April 2008)
- Other work has been provided in confidence from businesses.

However, the development of the Tekau Plus strategic direction, planning and outputs has been a key part of the 'thinking' that has gone on between meetings. This has culminated in the papers on strategy – including the Te Puna framework and Export Excellence documents.

A core piece of work for the operational requirements has been to develop the framework and criteria for selection of businesses/clusters into Tekau Plus. This work is captured in the Clearwater Ltd (Michael Ahie) Reports (see 26 March 2008).

Clustering

The clustering work is a core component of the contract with TPK. It has been necessary to carry out significant work in building to the clustering ensuring that there has been adequate communications to ensure that the programme attracts the most appropriate people, ensuring that the resources and assistance is available as the opportunities arise.

In this regard, the work on strategy and communications has been the main focus for the Tekau Plus Board and management.

However, as part of the research and analysis workstream work has been done on identifying the most appropriate way to select clusters, based on their individual merit and strategic merit. The work undertaken by Clearwater Ltd is a key resource for this.

With the development of the branding and the communications information work has started on identifying potential clusters and on developing the relationships with the initial 2-3 cluster leaders.

Clusters underway

Appendix 1 provides a list of the first seven clusters that are at various stages of formation and development. Some are in pre-negotiation talks, ensuring an alignment of vision and values with Tekau Plus. This means for example, ensuring that Tekau Plus is commercially driven, and is able to operate to preserve commercial confidentiality.

Risk

The project was delayed by three months because the contract was not signed until October 2007. This has meant that timelines were shortened. It was intended that this would be caught up by 30 June 2008. In all areas this has been achieved, except in the clustering output, where there is a lag of several weeks. Intensive engagement is underway on engaging with these potential clusters. The Board considers that it is important that the preliminary work is undertaken to ensure the quality and sustainability of the clusters and to enable investment and commitment over the longer term.

It was hoped that by 30 June 2008 2 clusters would have been identified and beginning their implementation. To date, while potential clusters have been identified, the first two have not begun implementation. The current work is focusing on ensuring fit and commercial sensitivities are managed.

While this risk is acknowledged, Tekau Plus considers that it poses no substantive risk to the project overall. By the end of the next 6 month period it is expected that at least 3 clusters will be in train.

Programme Overview

This section provides an outline of the Tekau Plus strategy and programme.

The Tekau Plus strategy is built on the key elements in the contract for delivering services:

- Communication
- Research and analysis
- Export alliances/clubs

Tekau Plus provides a central channel with three fundamental objectives:

1. a centre for Māori businesses to organise business and implement Export Excellence and investment strategies;
2. a centre for stakeholders to engage easily with Māori;
3. a centre to strategically position Māori within the value-chain.

Tekau Plus has developed to provide five initial programmes:

- E10+ – to build an internationally recognized 10-year export plan
- Tran\$formation – to innovate and capitalize on research science and technology
- Export Club – to build nationally and internationally recognized channels for networking
- Advisory services – to provide specific advisory services to assist export capability
- Capacity and knowledge – to provide information relating to value creation and exporting.

The Tekau Plus Board is concentrating on delivering on the contractual requirements for the programme in relation to agribusiness. Agribusiness is seen as focusing on the food, beverage, fibre compound technology areas.

To assist Māori to create 10 high value businesses /brands, each strategically positioned in niche markets and earning in excess of ten million in foreign revenue within ten years and together building a Māori Export Club worth over \$100 million. The game-plan includes raising the level of strategic dialogue within Māori economic networks and providing a central channel for dialogue, engagement and market execution.

Overview Panel

The membership of the Overview Panel is made up of a minimum of the Māori Trustee and Te Puni Kokiri (represented by Evan Nathan as the Contract Manager).

However, following meetings with the CEO of NZTE in December 2007, an NZTE representative was included on the Overview Panel (Liz Gibson).

The Overview Panel has two broad roles:

- To provide an overview and monitoring function to assist TPK and Māori Trustee to meet the contract requirements and intent (mainly through peer review of the 6 monthly reports)
- To provide Tekau Plus assistance, advice and liaison to assist in the delivery of the project

In relation to the first:

- The Overview Panel has met with the Tekau Plus Board on one occasion (27 February 2008 meeting of the Tekau Plus Board).
- The Overview Panel has met once formally to discuss and develop its role.
- There has been on-going liaison as part of the less formal contract management role. This has included discussion on Parliamentary Questions and Official Information requests that relate to the Tekau Plus project.
- The TPK contract manager formally wrote to the Tekau Plus Board to inform the Board of an Official Information Act request.

In relation to the second role:

- The NZTE member has been an important conduit of information and in assisting to develop relationships with key NZTE staff.
- A significant event has been the CEO of NZTE participating in, addressing and making an offer of NZTE assistance to Tekau Plus at the workshop on 30 April.
- TPK has also been of assistance in ensuring a measure of connectivity between this project and several others, including the Regional Partnerships project.

However, with staff changes currently taking place in NZTE and TPK, continuity in the Overview Panel poses a risk. This has been managed by having a second TPK member on the panel, but it is envisaged that further changes, including having alternative members will be required.

Summary

Overall the Tekau Plus project is working well. Significant effort in the first six months was focused on the development of the governance and management systems and processes, to ensure full, transparent and relevant accountability, and on the strategic framework and development of the services and relationships to implement this ambitious programme.

The programme is founded on robust and practical systems and information, based on sound research and industry peer review.

The strong support and buy-in from key stakeholders, particularly NZTE and MFAT, and private sector and Māori business confirm the strategic alignment of the programme.

The feed back to the relationships, communications activity and delivery of targeted workshops has further highlighted that the programme is poised to make significant progress.

The initial five programmes are intended to enable a focus on facilitating:

- Building internationally recognized icon export businesses
- Transformation through science and technology
- Channels for exporting through networking and trade
- Advisory services to potential exporters
- Capacity building through information and knowledge sharing

Progress against outputs and success indicators

This section provides a synopsis of progress with specific reference to the milestones, outputs and success indicators in the contract (ie Schedule A and Schedule G)

Schedule A		Schedule G		30 June Report
		3 Year Plan	3 Year Plan	
Outputs	Success Indicators	1 st 6 months	2 nd 6 months	
Initial Development Plan to provide a detailed plan to outline costings and resources for a three (3) year period.	The larger three (3) year plan is able to go ahead.	n/a	n/a	Completed: <ul style="list-style-type: none"> Contract signed, MoU signed establishing the Business Advisory Group (now called Tekau Plus Board) (8 October 2007); Operating Charter (finalised February 2008) 3 year plan approved, 6 month operations plan approved (22 October 2007)
Business Advisory Group is established				
Communications: Providing information to enable open participation and identification of partners.	Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.	Comms, risk & stakeholder plan developed, promotion material & website planned. Approved communication stakeholder risk plan	Hui roadshow with Māori agribusiness, web update, promotion clusters, media release. Marketing to Māori agribusiness.	Completed: <ul style="list-style-type: none"> Communication plan, and risk plan (20 October) On-going briefings with key stakeholders (eg 19 December 2007, 26 March 2008) Key communication events (eg FOMA conference 07; FOMANA Capital Launch, 12 March Tom Reardon workshop, 30 April FTA workshop)

Clustering: Facilitation, brokerage and specific analysis is undertaken for cluster projects.	3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the contract period.	Scoping and clusters identification, hui and diligence on likelihood <ul style="list-style-type: none"> Identification 2-3 cluster 	1-2 pilots implemented <ul style="list-style-type: none"> 1-2 clusters implemented 	Partially completed: <ul style="list-style-type: none"> Cluster identification methodology approved (26 March 2008) Cluster framework and selection principles developed. Intensive engagement at formative stages of development Initial shortlisting process underway.
Strategy: Development of strategy and buy in to the strategic approach by participants.	The documentation is developed and implemented.	Concept proposal, plan prepared and strategic framework drafted <ul style="list-style-type: none"> Approved plan 	Hui with agribusiness, exporters, CRIs, NZTE and private investors <ul style="list-style-type: none"> Strategic players agree to support 	Completed: <ul style="list-style-type: none"> Strategy documents developed include the Tekau Plus Export Excellence document (21 May 2008) and Te Puna Promotion document (26 March 2008), buy in achieved from key stakeholders, in particular: <ul style="list-style-type: none"> NZTE – with offer of resources and assistance in December to Tekau Plus, and in 30 April of assistance to clusters MFAT – making Tekau Plus a key stakeholders for meetings and information PGG Wrightsons sponsorship at Tekau Plus events and sponsorship of scholarship Others – including CRIs, Universities

Analytics and research. Development of information and analysis to inform decisions and identify strategic pathways.	The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.	Scoping contracts for One Channel/Brokerage system, export market data, value chain and business case terms <ul style="list-style-type: none"> Scoping document completed 	Approved criteria and policies. One Channel and Brokerage System finalised, research data and business case complete <ul style="list-style-type: none"> Criteria, policy and One Channel & Brokerage System formed 	<p>Completed:</p> <ul style="list-style-type: none"> On-going research papers and information collected and brought together. Key work includes: <ul style="list-style-type: none"> Overall strategy – Te Puna framework and Export Excellence documents. (March, May 2008) Operational requirements – framework and criteria for selection clusters in Clearwater Reports (26 March 2008).
Management and Governance. Provide overall co-ordination and project management including reporting and accountability.	There is robust accountability to reporting and project remains on track.	Governance structure, BAG members & project management and contract complete, hui key stakeholders <ul style="list-style-type: none"> Programme completed & Structure finalised 	Networking with key stakeholders, 5 monthly report, project governance & management. <ul style="list-style-type: none"> Completion of 6 month report 	<p>Completed:</p> <ul style="list-style-type: none"> Ongoing planning, reporting, minutes, project management, identified in Tekau Plus Board Minutes Monthly Board meetings (except January) and several administration meetings mid-month Accountability documentation in Minutes for expenditure, activity and strategic direction Quarterly reports completed and TPK funding requirements met Meetings with Overview panel with the Board and management

Financial Performance

This section provides a summary of the progress of the contract with reference to the financial reporting requirements in the contract (ie Schedule D and Schedule E)

Overall the expenditure is in line with the three year plan, and the Budget set in the contract.

3 Year BUDGET

		Year ending		
		30 June 2008	30 June 2009	30 June 2010
Communications	200,000	100,000	100,000	100,000
Clustering	1,600,000	200,000	680,000	720,000
Strategy	500,000	100,000	50,000	50,000
Analysis/Research	300,000	200,000	150,000	150,000
Management/Governance	420,000	120,000	100,000	200,000
TOTAL	3,020,000	720,000	1,080,000	1,220,000

Year 1	Income to 30 June 2008	Expenditure To 30 June 2008	Variance	Variance explanation
	\$	\$	\$	
Communications	100,000	122,611	-22,611	Over, due to extra work undertaken to communicate on clustering (as mitigation action)
Clustering	200,000	101,750	98,250	Under, slower progress than expected
Strategy	100,000	132,000	-32,000	Over, providing extra workshop with VUW
Analysis/Research	200,000	132,300	67,700	Under, dependent on clusters forming
Mgmt/Governance	120,000	104,952	15,048	Under, focus of effort on strategy and communication
Interest	6,632			
TOTAL	726,632	593,613	133,019	18% variation

Mgmt/Governance	<ul style="list-style-type: none"> Governance meeting fees to 30 June 2008: <ul style="list-style-type: none"> Māori Trustee \$8,800 FOMA \$10,400 Poutama \$7,200 MTO fees are \$22,500 for gov/mgmt FOMANA fees are \$ 60,000 for gov/mgmt
-----------------	---

Key points to note are:

- Governance fees were set at \$ 800 per meeting (18 February 2008)
- Management fees were set for MTO at \$7,500 per quarter

TEKAU PLUS₁₀₊

Export Excellence

QUARTERLY REPORT

30 September 2008

Released under the Official Information Act 1982

QUARTERLY REPORT : Progress against outputs and success indicators

Period 1 July 2008 – 30 September 2008

Progress for 3rd six month period, for 5th payment

Schedule A		Schedule G	30 September Report (Progress towards 3 rd 6 months outputs)
Outputs	Success Indicators	3 Year Plan 3 rd 6 months (1/7/08- 30/12/08)	
Management and Governance: Provide overall co-ordination and project management including reporting and accountability.	There is robust accountability to reporting and project remains on track.	12 month work programme, project governance and management o Work programme completed	<ul style="list-style-type: none"> There has been a change in the contract management confirmed from 8 July 2008. Since then a number of meetings have occurred to provide information and explanation of the programme, including Dave Samuels, Joanne Silberstein and Scott Baldwin attending Board Meeting on 24 September.
Strategy: Development of strategy and buy-in to the strategic approach by participants.	The documentation is developed and implemented.	Agribusiness workshops with CRI, NZTE and private investors o Strategic workshop	<ul style="list-style-type: none"> Strategy has had three focuses. <ol style="list-style-type: none"> Meetings with key Maori stakeholders regarding clarifying and developing alliances/clusters that commission specific export or FDI work. Have now established first few cluster groupings, now aim to get them signed on. Analysing economic reports on the current credit crunch and possible impacts + & - on Maori & Tekau Plus. Meeting with key industry leaders and government agents to cement support.

Communications: Providing information to enable open participation and identification of partners.	Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.	Hui to illustrate research data, promote One Channel & Brokerage System o Pool of key Maori agribusiness commit to participate.	<ul style="list-style-type: none"> Tekau Plus Symposium – The next 10 years 11/12 September (ca 100 participants – from Govt, CRI, NZTE, Maori business, other businesses, investment and branding experts etc). Positive feedback from TPK, other depts, key Maori stakeholders – including e-mails noted in <i>Minutes from 24 Sept meeting</i> Media – NBR, Maori TV, TV One, Radio Watea Koha magazine from symposium has had positive feed back Regional hui held in: Rotorua, Auckland Invitations received from other regions to <p><i>Mgmt report Minutes 24 September</i></p>
Analytics and research: Development of information and analysis to inform decisions and identify strategic pathways.	The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.	Further market research key niche studies implemented o Market research and key niche studies implemented.	<ul style="list-style-type: none"> Market channel study and branding strategy in discussion with entities in the food sector (<i>Mgmt report Minutes 24 September</i>)
Clustering: Facilitation, brokerage and specific analysis is undertaken for cluster projects.	3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the contract period.	Structural systems finalised for first cluster group, 1-2 new clusters formed o Cluster systems finalised	<ul style="list-style-type: none"> Significant effort on developing cluster groups – with key sector interests (eg aquaculture, honey, dairy, brand designers) – (<i>Mgmt report Minutes 24 September</i>) Regional hui to form clusters in Rotorua and Auckland, with Te Arawa keen to form a cluster Sector clusters <ul style="list-style-type: none"> Sheep and Beef - verbal commitment to a cluster Dairy likely to come from this as well Manuka – meetings have occurred, and there is a wider discussion with key players, including a wider range of interests from different regions to be brought into the discussion Nutraceutical – meetings held



MĀORI GLOBAL AGRIBUSINESS – TEKAU PLUS

SIX-MONTHLY REPORT

30 December 2008

Introduction

This report is a contractual requirement and is intended to provide assurance of the progress of the project, and in particular of delivery on the contract between Te Puni Kōkiri and the Partners for the project – the Māori Trustee, Federation of Māori Authorities and Poutama Trust (described as the Business Advisory Group) and known as the Tekau Plus Board.

Reporting

The Māori Global Agribusiness contract (in Schedule C) requires:

The six-monthly reports will report on:

- a. the outputs and success indicators in Schedule A (with specific Reference to the milestones and indicators in the three year work plan attached as Schedule G)
- b. the financial requirements in Schedule D and Schedule E
- c. the work of the Overview Panel
- d. the outputs, outcomes and processes set out in the three year plan

This report is in several parts:

1. Overall description of progress ((c) and (d))
2. Description of progress against the 3 year plan (a)
3. Financial reports (b)
4. Key documents

Tekau Plus

Summary Highlights

July-December 2008

- First cluster business formal letter of intent dated 28 November 2008 received from Waituna Brewing Company (Leverage Indigenous Beverage – Ale Study).
- Second cluster business formal letter of intent dated 23 December 2008 received from Tohu Wines (Leverage Indigenous Beverage – Wine Study).
- Verbal commitment to form Tekau Plus cluster received from 2 other businesses in December 2008, with formal letters of intent received in January 2009. (Sheep & Beef sector and Kiwifruit & Horticulture sector).
- Cluster structural systems developed and finalised including due diligence, terms of reference, confidentiality, and cluster methodology to achieve e10+ plan.
- Considerable engagement with many Maori businesses occurred in mid-late 2008 including regional workshops Rotorua, Auckland and Nelson.
- Dialogue and cluster development with 11 potential clusters: (Kiwifruit, Agribusiness Training Systems, Nutraceutical, Cosmeceutical, Beef & Sheep, Dairy, Aquaculture, Seafood/Crayfish, Future Foods, Wool & Fibre, Organics & Growers).
- Launch of Tekau Plus website with the full programme of services on 7 July 2008.
- Tekau Plus Export Excellence Symposium (The next 10 Years) held at Te Papa in Wellington on 11-12 Sept 2008 with 130 participants over 2 days.
- Symposium presenters were of particular interest and strategic importance, with keynote speakers including speakers 'new' to the Maori economic world:
 - Mary Boyd (*The Economist*)
 - Graeme Harrison (Chair ANZCO)
- Positive feedback received for Symposium in Sept 08.
- An updated Work Programme for the next 18 months to 30 June 2010 has been developed and is appended to this Report.

Overview and Progress

Governance and Management

Management reporting through board reports and minutes remains a clear indication of the underpinning approach of the board to operate in a businesslike way, ensuring that the decision-making is robust and transparent. A review and update of the Project Operating Charter was undertaken in the Oct – Dec 2008 quarter and a fully revised and updated work programme for the remaining contract period to 30 June 2010 has been completed.

The period of July 2008 - December 2008 for governance and management had three key areas for focus:

- The symposium "The next 10 years" on 11-12 September
- Discussion with TPK on progress and contract issues
- Tekau Plus cluster focus

Symposium

The symposium was a significant event and publicly launched the Tekau Plus programme on the NZ export scene. It galvanized action among Maori export businesses and potential exporters to start engaging with one another, and more importantly, with key NZ business leaders and agencies who are committed to growing NZ's export earnings. It was also as a time to test the concepts that had been developed within the Tekau Plus strategy context. Powerful messages from the (then) Minister of Trade – Hon Phil Goff and Mary Boyd, from the world-recognised Economist Intelligence Unit in Shanghai, provided confirmation of the strategy and direction for Tekau Plus. As well, there were many positive business stories and provocative discussions from a range of world class speakers from Maori, indigenous Australia, and from throughout NZ's business community.

A copy of the Symposium programme was included in the Koha Magazine (Spring 2008 edition) and provided to all symposium participants.

Te Puni Kokiri (TPK) – contract issues

During the six month period Tekau Plus has worked with TPK to provide information and explanation of the programme. TPK noted that Tekau Plus had not met the terms of the contract for the clusters deliverable, and withheld a portion of the September Quarterly payment. The Board accepted this, and continued to implement the programme with an expectation that the next milestones would be achieved according to the 3 year plan.

Tekau Plus cluster focus

The board has reviewed the cluster deliverables and agreed to focus all efforts on achieving the 8-10 cluster propositions by 30 June 2010, with the aim to have 3-4 clusters in place by June 2009, and 8 clusters by 30 March 2010. Further detail on progress achieved in the first 18 months is set out in the Cluster section below.

An outline of the work programme, focusing on the clusters, is provided in Appendix 1.

Strategy

Over the last 3-6 months three key areas of change have been identified:

- The global financial and economic situation
- The NZ election and change in government priorities
- The impact of the global economy on the willingness of Maori and other stakeholders to continue to participate in Tekau Plus.

Tekau Plus was envisaged and established under financial and economic conditions far more favourable to businesses than the situation in December 2008. However, the Tekau Plus board has identified that the basic strategic approach remains valid, and that these new factors tend to strengthen the approach taken.

The overall strategic context within which the programme operates remains intact – NZ needs to export with an emphasis on adding value to our natural advantages. The basic approach of developing the scale and scope to use the competitive edge, take advantage of and share market intelligence and relationships remains a sound approach, and potentially more important in seeking to share and minimise risk, create opportunity and to provide the economic impetus to sectors and regions that Maori have significant resources in.

The change in the government and its priorities has also been considered. However, through the course of discussion with many of the new Ministers and Maori business leaders it is clear that the programme remains aligned to the goals and strategic intent of Ministers.

Hon Tim Groser

...study of total factor productivity...showed that in a 20 year period from 1978 to 1998 total factor productivity of NZ agriculture was almost three times higher than total factor productivity from the economy as a whole....

...our Government will aim to increase the ratio of exports to GDP by 10 percentage points by 2020

Rt Hon John Key

New Zealand knows very well that one of the critical factors for getting out of this current downturn will be our ability to trade our way out of it. We're a small cog in the global economy and we know that the only way we can lift our living standards is by growing our role in global markets....Now is most definitely not the time for any individual country to allow their worsening domestic economy to lead to a retreat from global trade and engagement.

The impact of recession on the potential Maori participants in Tekau Plus, and the stakeholders – as sponsors, partners, service providers – is as yet not known. There is potential for cashflow and investment to be reduced. However, there has been continued

positive support and it is increasingly widely recognised that Maori assets have a high productivity and growth potential.

As part of the planning process, a plan for 2009 has been produced to outline the key elements of the Tekau Plus strategy and the work to be undertaken. This has been developed to reflect the greater emphasis on the development of clusters and providing support through analysis, relationships and information.

Communication

In the first six months of the programme communications were targeted towards engaging with key government groups and sector organisations to ensure relationships and understanding of the programme. Following this broader publicity was built, and information material developed.

The Tekau Plus website has been developed to increase the profile and accessibility of the programme to. Alongside the symposium and ongoing engagement to increase and maintain stakeholder support were the main focus of the communications for the last six months.

Fomana's *Koha* magazine has been seen as a 'high quality' document profiling Maori business interests and stories in the export arena. The next edition of *Koha* will be produced in the first half of 2009 as an online web based magazine promoting Tekau Plus and will include stories and video interviews with the first 2 cluster participants and other Maori businesses.

The symposium drew much positive feedback – with many indicating their support for the Tekau Plus concept and new thinking, as well as the event itself with the informative and targeted array of speakers.

Continued meetings with key business people from in and out of 'Wellington' remains an important plank of communications; maintaining the momentum of the programme and broadening the base of potential participants. For example, a number of regional hui were held in Gisborne, Rotorua, Auckland and Nelson. The Rotorua and Auckland hui included three presentations:

- Tekau Plus strategy and cluster framework
- Mary Boyd presentation on opportunities/issues (*Economist* magazine)
- Maori Farm investment study in China (Tiroa and Te Hape trusts)

The messages of Tekau Plus are gaining traction under the new administration. The Minister of Maori Affairs, Hon Dr Pita Sharples, for example talked of the Maori Edge in his Address in Reply to the Speech from the Throne:

Maori Agribusiness on its own, already contributes over one billion dollars to our economy, with another 450,000 hectares of Maori land to be further developed. Michael Ahie, Chief Executive of Shirlaws, has challenged us to "release the economic potential in Maori,

particularly on the land, where most of the assets are held". He described this as the Maori edge, the resilience and flexibility, with an inherent acquired trading ability.

Numerous meetings and hui have been held with key personnel from universities, iwi organisations, trusts and incorporations and support organisations (eg CRIs, venture capital). A strong relationship has been forged with NZ Trade & Enterprise.

Analysis and Research

The on-going research and analysis is a core component of the work of Tekau Plus and the Board is provided with regular situational analyses, up to date market information including Market Intelligence Reports from NZTE. Over the last six months, the focus has shifted to the strategic context for exporters and the impact of the volatile global economic situation on NZ exporters.

Over the next phase of the project, it is expected that the research and analysis will continue to drill down, with more emphasis on areas that are specific to the needs of the sectors and markets identified in the clusters.

Clustering

In the last six months, there has been substantial progress in cluster development, with the establishment of the first cluster (comprising 2 cluster businesses), the implementation of a robust set of structural systems to support the cluster programme, and intensive dialogue with potential cluster participants including 2 verbal commitments that are likely to formally enter the Tekau Plus programme within the quarter to 30 March 2009.

Clusters Implemented - Leverage Indigenous Beverage Cluster (2 cluster propositions)

The first two cluster businesses submitted their formal letters of intent in November and December 2008 and will be working on two distinct cluster programmes (Indigenous Ale study and Indigenous Wine study) within the Leverage Indigenous Beverage Cluster. The businesses are: Waituna Brewing Company (brand is TaaKawa Ale) and Tohu Wines. There is future potential for additional beverage businesses to enter this Cluster.

Cluster Structural Systems in place

As part of the risk management approach a due diligence document has been developed to assess the viability of any businesses participating in clusters. An independent reviewer is engaged to complete the due diligence for each cluster participant and writes a report that forms part of the documentation considered by the Tekau Plus Board in making its decision on whether or not to accept a business as a Tekau Plus cluster participant.

Cluster participants also complete Terms of Reference & Confidentiality documents and sign up to cluster methodology framework that includes international market research, design study, audits and which forms the foundation for the e10+ Plan, the plan for achieving the \$10m+ goal.

Cluster development progress to date

Verbal commitment from 2 other businesses was received in the quarter to 30 Dec 2008 with formal letters of intent received in January 2009. (Sheep & Beef sector and Kiwifruit & Horticulture sector).

Over the past six months there have been several regional hui and follow up meetings with specific businesses that have serious intentions to participate in Tekau Plus Programme. These businesses operate within the following sectors:

- Sheep & Beef
- Dairy
- Kiwifruit & Horticulture
- Agribusiness Training Systems
- Nutraceuticals
- Cosmeceutical
- Aquaculture
- Seafood/Crayfish
- Future Foods
- Wool & Fibre
- Organics & Growers

Cluster development plan for next 6 month period

This is contained in the forward work programme for the next 18 months reflect this (copy attached).

Overview Panel

The membership of the Overview Panel is made up of a minimum of the Māori Trustee and Te Puni Kokiri (represented by Dave Samuels as the Contract Manager).

The Overview Panel has two broad roles:

- To provide an overview and monitoring function to assist TPK and Māori Trustee to meet the contract requirements and intent (mainly through peer review of the 6 monthly reports)
- To provide Tekau Plus assistance, advice and liaison to assist in the delivery of the project

Over the period of July-December 2008, the Overview Panel has not met, albeit there has been a formal meeting with TPK and the Tekau Plus board in September. At that meeting an explanation of the membership, role and function was discussed.

Nevertheless, Tekau Plus has continued to maintain communication with key members of the panel from NZTE, DoL and TPK, emphasising the sharing of information and strategy. DoL, NZTE and TPK participated in the symposium.

Tekau Plus has sought advice from NZTE in relation to the due diligence process and the cluster methodology framework.

Summary

This second six-monthly report indicates that there is a broad base of support, strong communication with stakeholders, and increasing interest from potential clusters of Maori export brand/businesses, particularly now that the first two cluster businesses have joined the programme.

The time taken to develop and implement a robust cluster framework methodology and due diligence process as part of the Cluster programme provides Maori business participants with a stepped process for developing their e10+ plan and gives all Tekau Plus stakeholders a high level of assurance that resources will be committed in a systematic and accountable manner.

A major event for the past six month period was the Tekau Plus Export Excellence Symposium. This attracted positive media attention, an array of excellent and 'new' speakers and strengthened relationships across Maori and mainstream export businesses. Ongoing communication about the Tekau Plus programme including feature articles and interviews with cluster participants will be maintained via the *Koha* magazine.

The Board and Management continue to conduct regular analysis of the new environment – both economic and political – to ensure that the fundamental approach of Tekau Plus remains supported and useful to Maori economic growth, and the NZ export led economy.

It is important that each cluster has a shared kaupapa and expectations before moving to implementation, and this has been a key focus over the period. It is, however, recognised that the key work for the coming months will be moving the clusters 'across the line' and through implementation phases. This is outlined in Appendix 1.

Progress against outputs and success indicators

This section provides a synopsis of progress with specific reference to the milestones, outputs and success indicators in the contract (ie Schedule A and Schedule G)

Schedule A		30 June Report	
Outputs	Success Indicators	3 Year Plan 3 rd 6 months (July-December 2008)	
Management and Governance: Provide overall co-ordination and project management including reporting and accountability.	There is robust accountability to reporting and project remains on track.	12 month work programme, project governance and management o New work programme	<ul style="list-style-type: none"> • There has been a change in the contract management confirmed from 8 July 2008. A number of meetings occurred and correspondence was offered between July and December to provide information and explanation of the programme. Dave Samuels, Joanne Silberstein and Scott Baldwin attending Board Meeting on 24 September (<i>see management report 24 September</i>) • Website launched in July • Assistance to TPK in answering MASC questions • September symposium a key focus early in the period, including establishing direction and purpose • Updating of the work programme commenced (<i>October management report</i>) • Updating of Project Operating Charter to enable among other things the appointment of alternates, confirm new TPK contacts, conform rotation of Chair of Board, update templates for financial and other reporting and register of interests (as per <i>24 September Minutes</i>) •
Strategy: Development of strategy and buy-in to, the strategic approach by participants.	The documentation is developed and implemented.	Agribusiness workshop with CRIs, NZTE and private investors o Strategic workshop	<ul style="list-style-type: none"> • Feedback and support for futures thinking in the New Zealand Institute and NZX paper "Economy on the Edge: Swan dive or belly flop? A draft strategy for coming out of the crisis stronger" • Consideration of strategy in light of economic and political scene; revised business plan for 2009

Communications: Providing information to enable open participation and identification of partners.	Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.	Hui to illustrate research data, promote One Channel and Brokerage system o Pool of key Maori agribusinesses keen to participate	<ul style="list-style-type: none"> 11-12 September: Tekau Plus Symposium – The next 10 years 11/12 September (ca 100 participants – from Govt, CRI, NZTE, Maori business, other businesses, investment and branding experts etc). Positive feedback from TPK, other depts, key Maori stakeholders – including e-mails noted in <i>Minutes from 24 Sept meeting</i> Sponsorship received in cash and kind from departments, CRIs, Sealord, PGG Wrightsons Marsh Mercer Kroll Media – NBR, Maori TV, TV One, Radio Watea Koha magazine from symposium has had positive feed back Regional hui held in: Rotorua, Auckland <p><i>Mgmt report Minutes 24 September</i></p> <ul style="list-style-type: none"> Communications meetings continued as a key part of the strategy – with range of meetings and discussions with large trusts and incorporations, iwi and with mainstream – eg science/innovation services (eg IRL, FAME, Marino Ltd) and sector organisations (eg Horticulture NZ). Growing interest from Wananga o Aotearoa and AUT on continuing to participate – eg Awatoru and ‘leading by design’ approach
Analytics and research: Development of information and analysis to inform decisions and identify strategic pathways.	The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.	Further market research, key niche studies implemented o market research and key niche studies	<ul style="list-style-type: none"> Market channel study and branding strategy in discussion with entities in the food sector (<i>Mgmt report Minutes 24 September</i>)
Clustering: Facilitation, brokerage and specific analysis is undertaken for cluster projects.	3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the	Structural systems finalised for first cluster group, 1-2 new clusters formed o cluster system	<ul style="list-style-type: none"> Significant effort on developing cluster groups – with key sector interests (eg aquaculture, honey, dairy, brand designers) – (<i>Mgmt report Minutes 24 September</i>) Regional hui to form clusters in Rotorua and Auckland, with Te Arawa keen to form a cluster

	contract period.	finalised	
			<ul style="list-style-type: none"> ○ Sector clusters in <i>August report</i> on a number of discussions <ul style="list-style-type: none"> ○ Sheep and Beef - verbal commitment to a cluster ○ Dairy likely to come from this as well ○ Manuka – meetings have occurred, and there is a wider discussion with key players, including a wider range of interests from different regions to be brought into the discussion ○ Nutraceutical – meetings held ○ Sector clusters in <i>October report</i> listed actions and timing for 2009 as: <ul style="list-style-type: none"> ○ Nutraceuticals, honey and wellness ○ Wool and fibre ○ Beverage – wine and ale ○ High value beef brand ○ High value sheep brand ○ Kiwifruit and horticulture ○ Dairy and offshore investment ○ Cluster strategy developed and refined for beverage (<i>December report</i>) ○ Due diligence started for beverage cluster – including initiating financial report and information on one of the potential cluster companies (<i>December report</i>)

Released under the Official Information Act 1982

Financial Performance

This section provides a summary of the progress of the contract with reference to the financial reporting requirements in the contract (ie Schedule D and Schedule E)

3 Year BUDGET

		Year ending		
		30 June 2008	30 June 2009	30 June 2010
Communications	200,000	100,000	100,000	100,000
Clustering	1,600,000	200,000	680,000	720,000
Strategy	500,000	100,000	50,000	50,000
Analysis/Research	300,000	200,000	150,000	150,000
Management/Governance	420,000	120,000	100,000	200,000
TOTAL	3,020,000	720,000	1,080,000	1,220,000

Key points on period July 2008-December 2008

- Income was reduced by \$100,000 as at September 2008 Quarterly payment, based on TPK indication of non-compliance with the contract

Year 1	Income to 30 June 2008	Expenditure To 30 June 2008	Variance	Variance explanation
	\$	\$	\$	
Communications	100,000	122,611	-22,611	Over, due to extra work undertaken to communicate on clustering (as mitigation action)
Clustering	200,000	101,750	98,250	Under, slower progress than expected
Strategy	100,000	132,000	-32,000	Over, providing extra workshop with VUW
Analysis/Research	200,000	132,300	67,700	Under, dependent on clusters forming
Mgmt/Governance	120,000	104,952	15,048	Under, focus of effort on strategy and communication
Interest	6,632			
TOTAL	726,632	593,613	133,019	18% variance
Year 2 6 mth YTD	Income to 30 December 2008	Expenditure To 30 December 2008	Variance	Variance explanation
	\$	\$	\$	
Communications	50,000	39,783	10,217	Under budget with symposium costs lower and sponsorship
Clustering (funds withheld)	340,000 (100,000)	138,500 (100,000)	201,500 (100,000)	Under with effort focusing on clustering facilitation
Strategy	25,000	32,500	(7,500)	
Analysis/Research	75,000	80,000	(5,000)	
Mgmt/Governance	60,000	56,452	3,547	
Interest	4,740		4,740	
TOTAL	454,740	347,236	107,504	23% Variance

Note that at present December funding as per the contract that has yet to be received is \$275,000 exclusive of GST. Hence Actual income received in cash is only 179,740.00 being the first quarter instalment of 275,000 less 100,000 plus interest leaving shortfall to meet actual accounts of some 167,496.00.

Total period October 07 December 08	Contract	Income	Expenditure	Variance	Variance explanation
	-				
		1,181,372	940,849	240,523	20% variance

APPENDIX 1

18 Month Forward Programme Overview from January 2009 to 30 June 2010

Table: 18 month (Quarter 7 to 12) Programme Overview. (From Schedule G of Investment Agreement)

3 Year Programme	7 Quarter Jan/Mar 2009	8 Quarter Apr/Jun 2009	9 Quarter Jul/Sep 2009	10 Quarter Oct/Dec 2009	11 Quarter Jan/Mar 2010	12 Quarter Apr/June 2010	Budget
Governance	2 Governance meetings	2 governance meetings	2 governance meetings	2 governance meetings	2 governance meetings	3 governance meetings	\$261k
Key Milestone	<ul style="list-style-type: none">Contractual requirement 8 – 10 Cluster PropositionsQuarterly and six monthly reports						
Clusters	1-2 cluster propositions	3-4 cluster propositions	4-6 cluster propositions	6-7 cluster propositions	8 cluster propositions	8-10 cluster propositions	\$1.3m
Analysis	<ul style="list-style-type: none">Analysis: research to assist establish and clusters and market data for clusters.						\$285k
Communication	<ul style="list-style-type: none">Communication: quarterly articles published, PR support, stakeholder management to support clusters.						\$135k
Strategy	<ul style="list-style-type: none">Strategy: symposium and new revenue options to support clusters.						\$35k
Resources: Cluster direct and in-direct services to be provided to cluster propositions.							\$1.75m

Instalments	Amount	Work Programme	Deliverable
# 5 30 Sep 2008	\$100k	Cluster and methodology	Cluster analysis, cluster methodology and promotion.
# 6 30 Dec 2008	\$275k	Cluster	1 Cluster propositions -1. Wine & 2. Ale (Leverage Indigenous Beverage)
# 7 30 Mar 2009	\$275k	Cluster	1 Cluster proposition - Kiwifruit (Indigenous Branding & Indigenous Marketing)
# 8 30 June 2009	\$275k	Cluster	1 -2 Cluster propositions
# 9 30 Sep 2009	\$275k	Cluster	1-2 Cluster proposition
# 10 30 Dec 2009	\$275k	Cluster	1 -2 Cluster propositions
# 11 30 March 2010	\$275k	Cluster	<u>8 (9) Cluster Propositions</u>
# 12 30 June 2010	\$375k	Cluster propositions	1 Cluster proposition / 1 Cluster proposition <u>Goal: 8-10 Cluster propositions. Project evaluation and final report</u>

TEKAU PLUS¹⁰⁺

Export Excellence

QUARTERLY REPORT

30 March 2009

Released under the Official Information Act 1982

QUARTERLY REPORT : Progress against outputs and success indicators

Period 1 January 2009 – 30 March 2009

Progress for 7th payment

Schedule A		Schedule G	30 March 2009 Report (Progress towards 4 th 6 months outputs)
Outputs	Success Indicators	3 Year Plan (Revised from 1 January 2009 with greater detail) (1/1/09- 30/3/09)	
Management and Governance: Provide overall co-ordination and project management including reporting and accountability.	There is robust accountability to reporting and project remains on track.	<ul style="list-style-type: none"> • Provide governance and management of the programme • Meetings with sponsors/funders and overview panel • Meetings with key stakeholders (eg new government) • 6 monthly report <ul style="list-style-type: none"> ○ Mtgs with key stakeholders ○ 6 monthly report 	<p>Two Governance Board meetings held in this quarter on 29 January and 26 March 2009 with full attendance by all three Board members. Management provided comprehensive and well-researched meeting papers covering progress against all contract Outputs including in particular:</p> <p>In January:</p> <ul style="list-style-type: none"> ○ Revised Work programme for next 18mths (Jan 2009 – June 2010); ○ Budget Variance report for first 18mths; ○ Budget to achieve forward work programme for next 18mths; ○ Cluster methodology framework and terms of ref for Beverage cluster; ○ Report on engagement with potential businesses across 12 clusters; ○ Report on engagement with key stakeholders (Govt, iwi, Maori, Industry); ○ Proposal with analysis and options for 2009 Tekau Plus Symposium; <p>In March:</p> <ul style="list-style-type: none"> ○ Draft Six monthly report for period 1 July to 30 Dec 2008; ○ Report on engagement with key stakeholders including new Ministers; ○ ASEAN FTA report and Asian marketing opportunities; ○ Food & Beverage research reports; <p>For each meeting, Board members also received specific commercial, due diligence and terms of reference documentation on cluster business applicants to support the Board's Tekau Plus cluster programme approval process. Meeting with Overview Panel planned for April/May 2009.</p>

Strategy: Development of strategy and buy-in to the strategic approach by participants.	The documentation is developed and implemented.	<ul style="list-style-type: none"> • Meet with key Maori agribusinesses • Meet with key private exporters • Work with NZTE, MFAT and other govt depts • Monitor the strategy through quarterly reviews • Agribusiness wkshop with CRI, NZTE and pvt investors • Planning for 2009 Tekau Plus symposium <ul style="list-style-type: none"> ○ Strategic workshop held ○ 2009 Tekau Plus symposium drafted 	<p>In January the Board reviewed the whole work 3 year work programme. It looked at the first 18 months of the project and received a detailed variance report on costs, outputs and milestones. Notwithstanding the later start date (October 2007 rather than July as stated in contract schedules), the Board agreed to retain the original reporting schedule without variation and to prioritise all work towards achieving the 8-10 clusters as per the contract.</p> <p>Accordingly, the Board agreed to a revised Work Programme for the next 18mths (Jan 2009 – June 2010) with a priority on supporting cluster development across all output areas. As a result, the Board has decided not to hold a Symposium in 2009 but may do so in early 2010.</p> <p>Substantial effort was applied in this quarter to promoting the value of Tekau Plus and its export earning potential to the NZ economy. In particular, through NZTE and MFAT networks in China, South East Asia and in Canada. For example, Tekau Plus Project Manager, Wayne Mulligan, attended the ASEAN FTA signing in Thailand, was a speaker at the Assembly of First Nations event in Canada, and is invited to accompany the Prime Minister as part of a small business delegation to China in April 2009 .</p>
--	---	---	--

Communications: Providing information to enable open participation and identification of partners.	Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.	<ul style="list-style-type: none"> • Maintain stakeholder relationships • Hui to illustrate research data, promote One Channel and Brokerage system • Review Tekau plus communications plan • Review Tekau plus risk mitigation plan <ul style="list-style-type: none"> ○ Pool of key Maori agribusiness commit to participate ○ Stakeholder hui held ○ Tekau plus communication and risk plans reviewed and updated 	<p>Tekau Plus Board members and Management maintained an intensive communications and stakeholder engagement schedule during this quarter including:</p> <ul style="list-style-type: none"> • Ministerial briefings (Trade, Maori Affairs, Agriculture & Forestry) • NZ Trade & Enterprise Chair, CEO and Senior Management • Presentation to Maori Economic Seminar in Tauranga, 20 Feb 09 • NZ Business delegation to ASEAN FTA, Thailand, 25 – 28 Feb 09 • Meeting Maori businesses in Northland (Kawakawa, Waitangi, Kaikohe) • Meetings with CRAG, CRIs and Universities/Wananga • Potential Maori business cluster participants <p>Tekau Plus actual and potential cluster participants were profiled in the KOHA magazine published by FOMANA Capital and released at a public function on 30 March attended by 110 guests including 4 Ministers, 4 MPs and the Ambassador of Japan.</p>
--	---	---	--

<p>Analytics and research: Development of information and analysis to inform decisions and identify strategic pathways.</p>	<p>The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.</p>	<ul style="list-style-type: none"> • Maintain up to date sector and market intelligence and economic and financial export market analysis • Engage research on international markets for Tekau plus clusters • Identify niche markets <ul style="list-style-type: none"> ○ <i>Market research and key niche studies implemented</i> 	<p>The Tekau Plus Board receives regular market intelligence reports, economic updates and export reports in Meeting papers and environmental analysis reports prepared by Management.</p> <p>Specific reports analysed and received in this quarter include:</p> <ul style="list-style-type: none"> • NZ Institute discussion paper series on the global economic recession • ASEAN FTA documents and business presentations from Thailand • Reports on emerging markets in China • Food Trends paper • Wine market reports <p>The Indigenous Beverage Cluster Wine study and Ale study commenced during this quarter.</p>
<p>Clustering: Facilitation, brokerage and specific analysis is undertaken for cluster projects.</p>	<p>3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the contract period.</p>	<ul style="list-style-type: none"> • Structural systems finalised for first cluster group • Hui with key players on cluster development • 1-2 new clusters formed <ul style="list-style-type: none"> ○ <i>Cluster systems finalised</i> ○ <i>Hui with potential cluster participants held</i> 	<p>Cluster methodology finalised and 3 businesses approved in Beverage cluster. Summary of progress and expected targets across 8 specific clusters:</p> <p>1. Agricultural Cluster</p> <ul style="list-style-type: none"> • Dairy • Training • Negotiations with two dairy businesses and two/three training businesses. • Start Date Target: June 2009 <p>2. Indigenous Beverage Cluster</p> <ul style="list-style-type: none"> • Wine • Ale • Commenced the Wine study and completed first phase of the Ale study and have second Ale company ready. <p>3. Seafood Cluster</p> <ul style="list-style-type: none"> • Aquaculture / Oyster • Crayfish • In negotiations with two aquaculture/oyster businesses and two (possibly three crayfish participants. Start Date Target: May/June

			<p>4. Sheep & Beef Cluster</p> <ul style="list-style-type: none"> • Sheep • Beef • In negotiations with four sheep businesses and three beef businesses. • Start Date Target: April/May <p>5. Horticulture Cluster</p> <ul style="list-style-type: none"> • Honey • Kiwifruit • In negotiations with two kiwifruit businesses and two honey businesses. • Start Date Target: March/April <p>6. Value Add RS&T Cluster</p> <ul style="list-style-type: none"> • Ingredients (nutraceutical marine) • Ingredients (cosmeceuticals –native flora) • In negotiations with three nutraceutical businesses and two cosmeceutical businesses. • Start Date Target: June/July <p>7. Fibre Cluster</p> <ul style="list-style-type: none"> • Forestry / Bio • Wool / Fashion • In negotiations with two forestry businesses and four wool/fashion businesses. • Start Date Target: June/July <p>8. Market Cluster</p> <ul style="list-style-type: none"> • Future Retail • Future Distribution • Future Foods • Part of the overall Tekau Plus all participants are keen to receive data on future foods, future retailing and future distributions.
--	--	--	---



MĀORI GLOBAL AGRIBUSINESS – TEKAU PLUS

SIX-MONTHLY REPORT

30 June 2009

Introduction

This report is a contractual requirement and is intended to provide assurance of the progress of the project, and in particular of delivery on the contract between Te Puni Kokiri and the Partners for the project – the Māori Trustee, Federation of Māori Authorities and Poutama Trust (described as the Business Advisory Group) and known as the Tekau Plus Board.

Reporting

The Māori Global Agribusiness contract (in Schedule C) requires:

The six-monthly reports will report on:

- a. the outputs and success indicators in Schedule A (with specific Reference to the milestones and indicators in the three year work plan attached as Schedule G)
- b. the financial requirements in Schedule D and Schedule E
- c. the work of the Overview Panel
- d. the outputs, outcomes and processes set out in the three year plan

This report is in several parts:

1. Overall description of progress ((c) and (d))
2. Description of progress against the 3 year plan (a)
3. Financial reports (b)
4. Key documents

Tekau Plus Summary Highlights

January -June 2009

- Five new clusters established in this six month period:
 1. Apiary
 2. Kiwifruit / Horticulture & Fibre
 3. Gourmet Foods & Ingredients
 4. Bio-Actives
 5. Dairy Organic
- To date there are now ten cluster propositions across six Clusters with seventeen business cluster participants

10 cluster propositions	17 Cluster participants
1. Wine	1. Tohu Wine
2. Ale & Ingredients	2. Kono Wine
3. Gourmet foods & High Quality Food Ingredients – Asia Study	3. Aotearoa Breweries NZ
4. Gourmet Food & Luxury Indigenous Visitor Experiences – America Study	4. Waituna Brewing Company
5. Kiwifruit Indigenous Branding	5. Nature's Country Gold
6. Harakeke –Ginseng Fibre proposition	6. Toku Foods NZ Ltd
7. High Value Manuka Honey & Wound healing products	7. Aotearoa Seafoods Ltd (ASL)
8. Building a high value Apiary business - Northland Proposition	Aotearoa Seafoods Ltd (ASL)
9. Biofarm World proposition	8. Navigator Tours Ltd
10. Bio-Active Compounds and Proof of Concept proposition	9. Te Awanui Huka Pak Co-op Ltd & Te Awanui Huka Pak Ltd
	10. Maraeroa C Inc – Pa Harakeke
	11. Biopolymer Network Ltd (BPN)
	12. ManukaMed Ltd
	13. Watson & Son Ltd
	14. Watson & Murray Associates Watson & Son Ltd
	15. Biofarm Products Ltd
	Maraeroa C Inc
	Te Awanui Huka Pak Co-op Ltd
	16. Earth 174 degrees
	17. Taramea Ltd

Tekau Plus Summary Highlights continued

January -June 2009

- Continued to work with the leverage indigenous beverage cluster
- Dialogue and cluster development with a further five potential clusters and approximately ten additional business entities:
 1. Aquaculture & Seafood
 2. FTA & Marketing
 3. Sheep & Beef
 4. Wool & Fibre
 5. Agri-Training
- Adding value to the programme through catalysing resources, demonstrating success and forming linkages and networks
- Supporting Māori participation in the Prime Minister led delegation to China
- Continued presentations on Tekau Plus were held at regional economic forum, providing information on Tekau Plus, but also on the wider potential of Māori exporting for NZ Inc
- Support for communications relating to Māori participation in trade and export related issues – for example through Koha magazine and in relation to FTAs
- Developing relationships and networks with research centres such as ForST, CRIs, universities that can assist the clusters to further develop technology and export potential
- Developing relationships with industry and trade networks that can provide information and data now for the clusters, and potential partners as the clusters develop

Overview and Progress

Governance and Management

The fully revised and updated work programme for the remaining contract period to 30 June 2010 was endorsed and initiated in January 2009.

The board has met on five occasions over the six months January-June 2009:

- 29 January
- 26 March
- 27 April
- 25 May
- 25 June

From 1 June Rino Tirikatene replaced Paul Morgan as the FOMA representative on the Tekau Plus board.

Over the last six months the board and management have focused attention to three key areas:

1. The core focus of the Tekau Plus board has been on the development of clusters. As the approval of each cluster may include the agreement to provide funds for activities (eg market analysis), this has required emphasis on ensuring a robust process.

The process has included:

- applications, terms of reference, due diligence reports
- presentations to the board by the potential cluster members in order for board members to test the business ideas and products and opportunities.
- discussion by the board, and planned spend against specific work.

The usual practices of managing conflicts of interest and ensuring that full documentation and due diligence is undertaken is provided as assurance to the process.

2. The Tekau Plus programme has moved into the implementation phase of the cluster groups. The programme provides for funding for cluster groups. The development of strong processes and ensuring that there is the cashflow available to support these decisions has been an added area of emphasis for the board and management.

3. The 'demonstration effect' and leadership is a key component of Tekau Plus. As such the board has continued to work with partners and develop relationships that can contribute to Māori growth in exporting, and developing the research and networks with international contacts. Examples of this include the board's full support and contribution of \$4,000 to the costs of Mr Gianluigi Zenti's trip to NZ. Mr Zenti is, President of Academia Barilla, part of the global Italian food company Barilla Group with international reach. More details are noted in communications.

Over this six-month period a Quarterly report to TPK was provided in May, covering the period to 30 March (this information is included in the progress reporting below). In addition, assurance was provided to the TPK investment manager on how actual or potential conflicts of interest are managed.

Strategy

The Board's strategy has been to develop six clusters. Each cluster may have a number of specific cluster propositions. A cluster proposition is where a number of businesses develop a specific market research program aligned to the Tekau Plus strategy. The key is to facilitate 'likeminded businesses' with complementary market focused strategies. An example is the leverage indigenous beverage cluster, which has two cluster propositions or distinct research programmes. One cluster proposition focuses on wine and developing a wine marketing strategy in North Asia (involving two companies). The other cluster proposition focuses on Ale & Indigenous ingredients (two companies) for the EU and North Asia market.

In the last six-monthly report (as at December 2008) three key areas of change were identified:

- The global financial and economic situation
- The NZ election and change in government priorities
- The impact of the global economy on the willingness of Māori and other stakeholders to continue to participate in Tekau Plus.

The global economic situation continues to be a major factor as a backdrop to the work of Tekau Plus. However, the emphasis on the development of clusters and providing support through analysis, relationships and information remains a strong strategic approach that has gained buy-in from participating groups.

Tekau Plus has continued to emphasise the need for long-term growth, developing the scale, knowledge and relationships to meet the challenges of export-led economic growth, and to meet the even greater challenges of an uncertain economic climate.

The key components to these challenges are emphasised in the programme in terms of leveraging export channels that already exist, planning integrated bodies of research, and building the networks for communication and sharing resources.

Communications

The communications activities that maintain dialogue, information and support are very important, as these will be the channels for the cluster participants as their businesses evolve.

The communications activity over the last six months has emphasised the consolidation of relationships with people and organisations who are key to promoting trade opportunities, at the political and government level, in the industry and production sectors and who offer technology and research resources and support.

This has included, for example, meeting with members of the Primary Industry Taskforce (Ngahiwi Tomoana, Wally Stone, Craig Ellison), meetings with key industry players such as PGG Wrightson or the Awhina Group, briefing the Minister of Trade, briefing MFAT officials, CEO and senior managers of NZTE.

Communications continued

Other communications strategies include developing relationships and networks that provide foreign trade opportunities. For example supporting participation in the Prime Minister led business mission to China or supporting Mr Gianluigi Zenti's visit to NZ and meeting with several Māori organisations in food production. These opportunities provide not only information and relationships that can assist Māori, but also ensure that there is a Māori presence, helping to crystallise the unique strengths of New Zealand. Mr Zenti's visit, for example, is also being sponsored by HortNZ, McDouall Stuart and others.

Regular communications with key partners continued over the last six months, as did meetings at a regional level to continue to promote and discuss the importance and opportunities of exporting and Māori production-based business and where Tekau Plus can assist. For example, presentations on Tekau Plus were held at Waiariki regional Economic Business Seminar (February), Tauranga (February), Tekau Plus presentations were also delivered in and Northland (Kawakawa, Waitangi and Kaikohe) (March) and central North Island (June).

It is expected that communications around the programme will become a greater focus in 2010 as the results of the work and clustering start to emerge.

Analysis and Research

Tekau Plus has continued to collect and maintain information reports on general trends and markets to provide context and guidance in the development of the cluster projects.

However, as the clusters have developed, the research and analysis workstream has placed more emphasis on areas that are specific to the needs of the sectors and markets identified in the clusters, and in particular focusing on information on 'food' production and consumption trends and statistics.

While the clusters have programmes including investigating more specific issues for their products and business needs, the board needs to be assured that there is a sound basis for the prioritisation of clusters and focus for their work programmes.

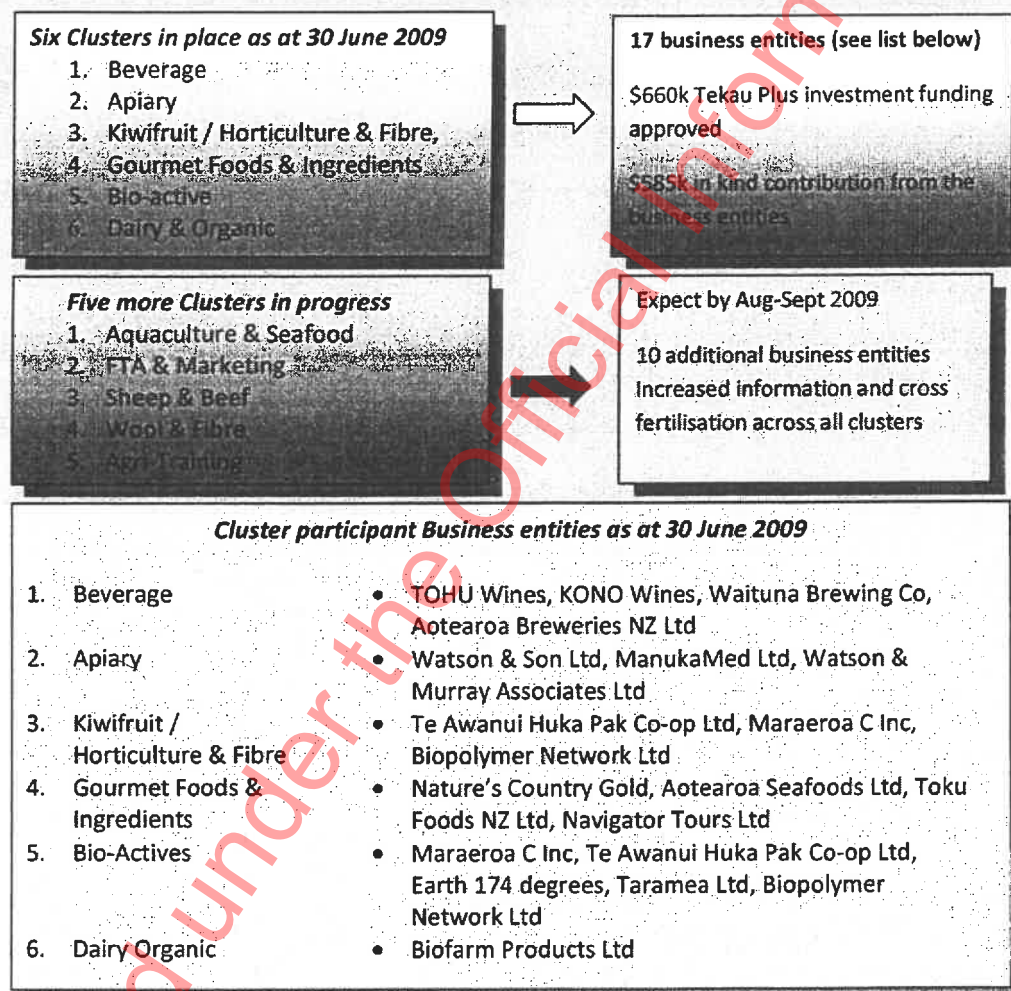
The research and information has enabled the board to ensure that the terms of reference and plans for each of the clusters is aligned with the strategic objectives of Tekau Plus and is aligned with market reality.

Clustering

The first half of the 2009 year has focused on bringing potential cluster groups which had made a commitment formally into the programme. At the end of June 2009 a total of six clusters are underway.

The planned approach to clustering has required significant up-front investment in time and in establishing the relationships and trust to be able to show how Tekau Plus can assist and add value while at the same time not reducing the commercial advantages and autonomy of each business.

The programme of interacting with potential cluster business participants began in early 2008. At December 2008, Tekau Plus had investigated and initiated one Cluster (Beverage) with two cluster propositions (Wine and Ale) and four business entities. In the last six months a further five Clusters have been approved, comprising ten cluster propositions and 17 business entities. Refer to the list below for the names of the businesses, noting that some business entities are in more than one cluster proposition.



Overview Panel

The membership of the Overview Panel is made up of a minimum of the Māori Trustee and Te Puni Kokiri (represented by Dave Samuels as the Contract Manager).

The Overview Panel has two broad roles:

- To provide an overview and monitoring function to assist TPK and Māori Trustee to meet the contract requirements and intent (mainly through peer review of the 6 monthly reports)
- To provide Tekau Plus assistance, advice and liaison to assist in the delivery of the project

Over the period of January – June 2009, the Overview Panel has not met, albeit there has been continued communication with key members of the panel.

Overview Members have been invited to review this six-monthly report and to meet with the Tekau Plus Board on 28 July 2009.

Summary and Added Value Benefits of Tekau Plus Programme

This is the third six-monthly report for the Māori Global Agribusiness contract, reporting on the fourth six month period in the contract. The broad base of support, significant work with potential cluster businesses and strong communication with stakeholders has been translated into clusters which are now undertaking the first stages of research, collaboration and investment.

However, the Tekau Plus programme can be seen to have wider effects than simply establishing the clusters, and although Tekau Plus is still in the mid-stream of the programme, some indicators of the benefits are starting to emerge.

Catalysing resources

Tekau Plus has catalysed investment and support from sources beyond the core funding provided by Te Puni Kokiri. In the first place the approach taken by Tekau Plus is to invest where the entities are willing and able to invest in the programme. The \$660,000 approved by Tekau Plus for the clusters to date will be been matched with at least \$580,000 from the business cluster participants themselves.

The investment by the cluster entities is considered as a vital component for ensuring the continuity and success of the programme. Moreover, this is money that may not have been invested in development without the shared resources of other partners.

Tekau Plus has been able to facilitate resources and support from organisations such as NZTE and FoRST, largely in the form of access to information and facilitating relationships, and 'research support' institutions such as the universities and CRIs. For example, the relationships with NZTE and others has directly assisted Tekau Plus Cluster members to receive access to information and services, for example:

- Food & Beverage Supply Chain report;
- Research on indigenous branding in Singapore, Canada, US and Germany;
- Organics Sector overview in US and Asia.

Other specific research programs which can benefit Tekau Plus Cluster members are currently being worked on through the University of Auckland Business School, Auckland Uniservices, IRL, Agresearch, Plant & Food, SCION and Massey University.

This includes, for example:

- Biopolymer Network (three CRIs) to work on the bio-actives with cluster members.
- Crop & Food to assist with gourmet/ingredient cluster;
- In discussions with Massey & Auckland Universities to assist with dairy/primary and future foods.
- Uniservices with added value science modelling and commercialisation advice.
- PGGWrightson & AgNZ on primary industry support.
- FOMANA has briefed key research and innovation business and policy leaders on Tekau Plus through participation on the Capitalising of Research and Action group (CRAG).

Demonstrating success

A further key plank for the programme was to provide a 'demonstration effect', where Māori businesses could be seen to be successful, and thus both encouraging other Māori businesses and opening the opportunities for mainstream and other businesses to see the potential in Māori business.

The symposium held in September last year, for example, attracted a range of successful mainstream business leaders and entrepreneurs, such as Graeme Harrison (Chair ANZCO), Greg Cross (Cross Ventures and Beachheads). This is starting to position Māori business increasingly within the mainstream, and potentially having a leadership role.

The communications work has formed the core of this work to date, and through the symposium and other media initiatives, such as stories in Koha magazine, there is a growing recognition of the position of Māori in the economy. This can be seen in the way in which the Tekau Plus provides a focus for initiatives that:

- Provided political and trade connections made during the visit to China with the Prime Minister;
- Offers potential for maximising benefits and connections with global Italian food company, Barilla Group (Mr Zenti visit being organised)
- Use the leverage, connections and soft benefits to better position Māori in the export market.
- Enable FOMANA in association with Japan New Zealand Business Council, NZTE and Japanese Ambassador to assist a number of Māori business individuals to attend a 2 week business and marketing study to Japan

Linkages and information

The Tekau Plus board recognises the fundamental requirements of information and relationships to overcome many of the market failures that stifle productivity, investment and growth. Building the relationships with trade networks is very important as they are about distribution and marketing data, information and networks and also about the future linking of Tekau Plus Cluster members with established networks.

Tekau Plus has enabled and provided a point of focus for:

- Māori participation in presentation on the FTA roadshows, as well as delegations to the signing of the China and ASEAN FTAs and built up a solid understanding of the exporting advantages of FTAs.
- Building networks with key businesses and individuals from these markets, including developing a database of international networks, including key 'beachhead' leaders, enabling Tekau Plus participants and Māori to link effectively into those markets.
- Participation in the Ministerial Taskforce on Primary Industry, and
- the Poutama international networks and the opportunities within FAME programme
- Relationships with incubators and briefed them on Tekau Plus.

Tekau Plus has also been a key feature in building relationships with trade organisations, such as:

- New Zealand China Trade Association;
- Asean NZ Combined Business Council (ANZCBC);
- New Zealand International Business Forum;
- Sealord & Aotearoa Fisheries Ltd (AFL);
- Fonterra;
- Zespri;
- Beca International;
- Absolute Foods;
- Elders Distribution.

Progress against outputs and success indicators

This section provides a synopsis of progress with specific reference to the milestones, outputs and success indicators in the contract (ie Schedule A and Schedule G)

Schedule A		30 June 2009 Report	
Outputs		3 Year Plan	
		3 rd 6 months (Jan-June 2009)	
Management and Governance: Provide overall co-ordination and project management including reporting and accountability.	There is robust accountability to reporting and project remains on track.	<ul style="list-style-type: none"> • Provide governance and management of the programme • Meetings with sponsors/funders and overview panel • Meetings with key stakeholders (eg new government) • 6 monthly report • Mtgs with key stakeholders • 6 monthly report 	<p>Governance and management processes continued, with 5 meetings over the period. Significant discussion on prioritisation of work programme to focus on strategic clusters at beginning of the period.</p> <p>Board focus on clusters. Board met with and heard presentations from cluster entities in January, March, May, June. This process included terms of reference proposals, background documentation and due diligence reports.</p> <p>Meetings with Leith Comer (28 April) Dave Samuels and TPK (May/June) (see Board papers 25 May, 25 June)</p> <p>Key stakeholder meetings with officials and Ministers.</p> <p>Rino Tirikatene replaced Paul Morgan as FOMA representative on the board from 1 June.</p>

Strategy: Development of strategy and buy-in to the strategic approach by participants.	The documentation is developed and implemented.	<ul style="list-style-type: none"> • Meet with key Māori agribusinesses • Meet with key private exporters • Work with NZTE, MFAT and other govt depts • Monitor the strategy through quarterly reviews • Agribusiness wkshop with CRI, NZTE and pvt investors 	<p>Work programme prioritisation and strategic clusters signalled and redrafted plan developed.</p> <p>The strategy is to continue to build networks, work on developing clusters and strengthening communications to promote cluster propositions.</p> <p>Promotion of Tekau Plus at the ASEAN FTA workshop. Invitation to accompany the PM to China, April 2009 for the opening of the new NZTE concept centre.</p> <p>Further alliances and information sharing with key resources in research partners such as Uniservices, Auckland Business School, IRL, Lincoln University.</p> <p>Ensuring that information is shared across clusters where appropriate, and to enable the added value from positioning Māori to take advantage of expos, trade fairs and the development of a foreign direct investment Export club.</p>

<p>Communications: Providing information to enable open participation and identification of partners.</p>	<p>Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.</p>	<ul style="list-style-type: none"> • Maintain stakeholder relationships • Hui to illustrate research data, promote One Channel and Brokerage system • Review Tekau plus communications plan • Review Tekau plus risk mitigation plan <ul style="list-style-type: none"> ○ Pool of key Māori agribusiness commit to participate ○ Stakeholder hui held ○ Tekau Plus communication and risk plans reviewed and updated 	<p>Tekau Plus stories in Koha magazine, including on potential cluster participants. Koha release function held on 31 March with over 100 attendees.</p> <p>Numerous meetings held with key officials and new Ministers (Groser, Sharples, Carter). A highlight was the invitation to attend the Prime Ministerial visit to China.</p> <p>Presentations on Tekau Plus at Waiariki regional Economic Business Seminar (February), Tauranga (Feb), Northland Tekau Plus presentations also delivered in and Northland (Kawakawa, Waitangi and Kaikohe) (March); CNI (June).</p> <p>Communications with potential cluster participants across range of sectors, and 'support' organisations – eg Te Wananga o Aotearoa and University of Auckland.</p> <p>There are now 17 business entities, within six Clusters. There is likely to be a further 10 business entities approved within the next three months. Furthermore, the number of organisations within the wider pool of organisations that are informed by or are able to benefit from the Tekau Plus clusters is significantly larger, with the membership of directors/trustees across multiple organisations.</p> <p>Tekau Plus communication and risk plan has not been reviewed and updated. However, this was not considered a priority in light of the review of the strategy and planning which supported the current approach.</p>

Analytics and research: Development of information and analysis to inform decisions and identify strategic pathways.	The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.	<ul style="list-style-type: none"> • Maintain up-to-date sector and market intelligence and economic and financial export market analysis • Engage research on international markets for Tekau plus clusters • Identify niche markets <ul style="list-style-type: none"> ◦ Market research and key niche studies implemented 	<p>Reports and analysis of emerging markets</p> <ul style="list-style-type: none"> - China - Thailand/ASEAN - Wine markets <p>Economic and trade information analysing the economic situation and opportunities.</p>
Clustering: Facilitation, brokerage and specific analysis is undertaken for cluster projects.	3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the contract period.	<ul style="list-style-type: none"> • Structural systems finalised for first cluster group • Hui with key players on cluster development • 1-2 new clusters formed ◦ Cluster systems finalised ◦ Hui with potential cluster participants held 	<p>The following 6 Clusters have been approved/initiated to 30 June 2009, comprising 10 cluster propositions:</p> <ol style="list-style-type: none"> 1. Beverage (2 cluster propositions) 2. Apiary (2 cluster propositions) 3. Kiwifruit / Horticulture & Fibre (2 cluster propositions) 4. Gourmet Foods & Ingredients (2 cluster propositions) 5. Bio-active (1 proposition) 6. Dairy & Organic (1 proposition) <p>A further 5 Clusters are in development:</p> <ol style="list-style-type: none"> 1. Aquaculture & Seafood 2. FTA & Marketing 3. Sheep & Beef 4. Wool & Fibre 5. Agri-Training

Comment [BG1]:

Financial Performance

This section provides a summary of the progress of the contract with reference to the financial reporting requirements in the contract (ie Schedule D and Schedule E)

3 Year BUDGET

		Year ending 30 June 2008	30 June 2009	30 June 2010
Communications	200,000	100,000	100,000	100,000
Clustering	1,600,000	200,000	680,000	720,000
Strategy	500,000	100,000	50,000	50,000
Analysis/Research	300,000	200,000	150,000	150,000
Management/Governance	420,000	120,000	100,000	200,000
TOTAL	3,020,000	720,000	1,080,000	1,220,000

Six-monthly reporting

6 mth 30 June 2008	Income to 30 June 2008	Expenditure To 30 June 2008	Variance	Variance explanation
	\$	\$	\$	
Communications	100,000	122,611	-22,611	Over, due to extra work undertaken to communicate on clustering (as mitigation action)
Clustering	200,000	101,750	98,250	Under, slower progress than expected
Strategy	100,000	132,000	-32,000	Over, providing extra workshop with VUW
Analysis/Research	200,000	132,300	67,700	Under, dependent on clusters forming
Mgmt/Governance	120,000	104,952	15,048	Under, focus of effort on strategy and communication
Interest	6,632			
TOTAL	726,632	593,613	133,019	18% variance

6 mth to 30 December 2008	Income to 30 December 2008	Expenditure To 30 December 2008	Variance	Variance explanation
	\$	\$	\$	
Communications	50,000	39,783	10,217	Under budget with symposium costs lower and sponsorship
Clustering (funds withheld)	340,000 (100,000)	138,500	201,500 (100,000)	Under with effort focusing on clustering facilitation
Strategy	25,000	32,500	(7,500)	
Analysis/Research	75,000	80,000	(5,000)	
Mgmt/Governance	60,000	56,452	3,547	
Interest	4,740	-	4,740	
TOTAL	454,740	347,236	107,504	23% Variance

6 mth to 30 June 2009	Income to 30 June 2009	Expenditure To 30 December 30 2008 June	Variance	Variance explanation
	\$	\$	\$	
Communications	50,000	45,408	4,592	
Clustering	340,000 100,000	194,500	245,500	Under based on cluster management. Specific cluster projects come to \$285,000 of commitments
Strategy	25,000	20,750	4,250	
Analysis/Research	75,000	69,000	6,000	
Mgmt/Governance	60,000	92,602	-32,602	Over, extra board meeting and work relating to the cluster presentations
Interest	5,822		5,822	
TOTAL	655,822	422,260 plus 285,000 commitments	233,562 -51,438	36% variance 8% variance

Total Contract period Oct 07 - June 09	Income	Expenditure	Variance	Variance explanation
	1,837,194	1,363,109 +285,000	189,085	10% variance There is more cluster expenditure expected in the coming six months as more clusters are initiated

APPENDIX 1

18 Month Forward Programme Overview from January 2009 to 30 June 2010

Table: 18 month (Quarter 7 to 12) Programme Overview. (From Schedule G of Investment Agreement)

3 Year Programme	7 Quarter Jan/Mar 2009	8 Quarter Apr/Jun 2009	9 Quarter Jul/Sep 2009	10 Quarter Oct/Dec 2009	11 Quarter Jan/Mar 2010	12 Quarter Apr/June 2010	Budget
Governance	2 Governance meetings	2 governance meetings	2 governance meetings	2 governance meetings	2 governance meetings	3 governance meetings	\$261k
Key Milestone	<ul style="list-style-type: none">Contractual requirement 8 – 10 Cluster PropositionsQuarterly and six monthly reports						
Clusters	1-2 cluster propositions	3-4 cluster propositions	4-6 cluster propositions	6-7 cluster propositions	8 cluster propositions	8-10 cluster propositions	\$1.3m
Analysis	<ul style="list-style-type: none">Analysis: research to assist establish and clusters and market data for clusters.						\$285k
Communication	<ul style="list-style-type: none">Communication: quarterly articles published, PR support, stakeholder management to support clusters.						\$135k
Strategy	<ul style="list-style-type: none">Strategy: symposium and new revenue options to support clusters.						\$35k
Resources: Cluster direct and in-direct services to be provided to cluster propositions.							\$1.75m

Instalments	Amount	Work Programme	Cluster Deliverable
# 5 30 Sep 2008	\$100k	Cluster and methodology	Cluster analysis, cluster methodology and promotion.
# 6 30 Dec 2008	\$275k	Cluster	1 Cluster propositions – <ul style="list-style-type: none"> Wine & Ale (Leverage Indigenous Beverage)
# 7 30 Mar 2009	\$275k	Cluster	1 Cluster proposition – <ul style="list-style-type: none"> Kiwifruit (Indigenous Branding & Indigenous Marketing)
# 8 30 June 2009	\$275k	Cluster	1 -2 Cluster propositions <ul style="list-style-type: none"> Apiary Gourmet/Future Foods ingredients Bio-active
# 9 30 Sep 2009	\$275k	Cluster	1-2 Cluster proposition
# 10 30 Dec 2009	\$275k	Cluster	1 -2 Cluster propositions
# 11 30 March 2010	\$275k	Cluster	<u>8 (9) Cluster Propositions</u>
# 12 30 June 2010	\$375k	Cluster propositions	1 Cluster proposition / 1 Cluster proposition
			<u>Goal:</u> 8-10 Cluster propositions. Project evaluation and final report



QUARTERLY REPORT

30 September 2009

Released under the Official Information Act 1982

Introduction

Tekau Plus has continued over the quarter July-September 2009 to concentrate on the development of the clusters. This can be seen in the number of cluster groups and the businesses in each now in place.

The work on the due diligence and establishing and agreeing the focus and strategies for each is the core work at this stage. This is underpinned by the One Channel approach, enabling the cluster groups to develop shared knowledge and strategies, that also support their individual business growth strategies.

The value proposition is about developing the information and relationships developing a coherent and collaborative approach, while recognizing that each business has commercial imperatives.

The research programme while focused on each business will provide broader information and knowledge to enable others in the cluster, and across clusters, to develop their brand, strategies and collaborative efforts.

Tekau Plus, by assisting to focus the research and shape the pathways, including developing the market and investment requirements, is able to support the individual businesses. Tekau Plus also provides an enabling environment to strengthen relationships and networks, and connect businesses and clusters to information that can assist in sound decision-making.

Continued communications and engagement with stakeholders is a key mechanism for Tekau Plus to ensure the flow of industry and sector information and the development of relationships that can support the growth of the cluster groups.

QUARTERLY REPORT : Progress against outputs and success indicators

Period 1 July 2009 – 30 September 2009

Progress for 9th payment

Schedule A	Schedule G	30 September 2009 Report (Progress towards 5 th 6 months outputs)
Outputs	Success Indicators (1/7/09- 30/9/09)	
Management and Governance: Provide overall co-ordination and project management including reporting and accountability	There is robust accountability to reporting and project remains on track	<p>• Provide governance and management of the programme</p> <p>• Meetings with sponsors/funders and overview panel</p> <p>• Meetings with key stakeholders (eg new government)</p> <p>• 6 monthly report</p> <p>○ Mtgs with key stakeholders</p> <p>○ 6 monthly report</p>
		<p>Three Board Meetings were held on 28 July, 27 August, 29/30 September. The September meeting was held in Auckland, with several meetings including with The Big Picture and Whakatohea Trust Board and attending the Go Global Conference, 29 September 2009</p> <p>During this quarter the board met with cluster groups and in particular:</p> <ul style="list-style-type: none"> • Mr Gianluigi Zenti, President of Academia Barilla visit to Wellington on 28-29 July 2009 <ul style="list-style-type: none"> ○ Co-ordinate Tekau Plus meeting and lunch hosted by Leith Comer and Te Puni Kokiri Senior Management, 28 July ○ Organise dinner with invited Ministers (Tim Groser, Georgina te Heuheu) and other Maori business leaders, 28 July ○ Co-ordinate workshop and lunch with E Tipu committee and members of staff and board of Te Ohu Kaimoana, 29 July • Dr Malcom Cone Otago University on opportunities for collaboration <p>The governance have maintained a careful overview of the progress on the clusters, giving priority to this activity, including approving the progress on establishment and undertaking due diligence.</p> <p>Management have provided the:</p> <ul style="list-style-type: none"> • Support and minutes to the board for meetings • On-going liaison with TPK • 6 monthly report for the period 1 Jan – 30 June 2009

			<p>In July the Board met with the Overview Panel, including discussion of the 6-monthly report, before submitting the final to TPK. The meeting covered among other things:</p> <ul style="list-style-type: none"> o overview of Tekau Plus and relationship with Overview Panel o strategy based on the cluster development o observation on the contributions from the businesses, noting this is in-kind o leveraging Tekau Plus with reference to Shanghai
--	--	--	--

<p>Strategy: Development of strategy and buy-in to the strategic approach by participants</p>	<p>The documentation is developed and implemented.</p>	<ul style="list-style-type: none"> • Meet with key Maori agribusinesses • Meet with key private exporters • Work with NZTE, MFAT and other govt depts • Monitor the strategy through quarterly reviews • Agribusiness wkshop with CRI, NZTE and pvt investors • Planning for 2009 Tekau Plus symposium <ul style="list-style-type: none"> o Strategic workshop held o 2009 Tekau Plus symposium drafted 	<p>Tekau Plus Business Plan Strategy document updated to reflect additional cluster participants approved for programme in July – Sept.</p> <p>A final and professionally designed public document will be available in the next quarter.</p> <p>Following comments by TPK Investment Manager on budget bids (July meeting), FOMANA has reviewed the Tekau Plus programme to date and is preparing a programme continuation paper for consideration by the Board at Oct meeting and for discussion with TPK in the next quarter.</p> <p>Continued meetings and conference participation with stakeholders, Maori land owners and exporting companies to develop the strategy context. For example, HortNZ, ASEAN NZ, CRIs.</p>
--	--	---	--

<p>Communications: Providing information to enable open participation and identification of partners.</p>	<p>Distribution of information through various media and when the level of participation is sufficient to enable implementation of the strategy.</p>	<ul style="list-style-type: none"> • Maintain stakeholder relationships • Hui to illustrate research data, promote One Channel and Brokerage system • Review Tekau plus communications plan • Review Tekau plus risk mitigation plan <ul style="list-style-type: none"> ○ Pool of key Maori agribusiness commit to participate ○ Stakeholder hui held ○ Tekau plus communication and risk plans reviewed and updated 	<p>Mr Gianluigi Zenti, President of Academia Barilla visit to Wellington on 28-29 July 2009 and various meetings with TPK, E Tupu and TOKM and key Ministers</p> <p>Go Global Conference, 29 September 2009. Auckland</p> <p>NZTE – ongoing stakeholder relationship meetings and Positioning Tekau Plus cluster participants to get accepted & take advantage of FHC Pathway to China</p> <ul style="list-style-type: none"> • Tekau Plus has eight companies going to China for the Pathway Package and Food-Hotel China program. China networks are excited about having such a diverse group of food and beverages companies under one banner. This is the first time such a large collective of Maori organizations have attended such an event for some time. <p>Communications with stakeholders continued across the board, including meetings with CRIs, key departments and agencies, and Maori entities that are potential cluster participants or interested parties.</p>
<p>Analytics and research: Development of information and analysis to inform decisions and identify strategic pathways.</p>	<p>The prioritizing and identification of strategic pathways and informed development of clustering and strategic implementation.</p>	<ul style="list-style-type: none"> • Maintain up to date sector and market intelligence and economic and financial export market analysis • Engage research on international markets for Tekau plus clusters • Identify niche markets <ul style="list-style-type: none"> ○ <i>Market research and key niche studies implemented</i> 	<p>Reports/documents reviewed / analysed across a range of topics and markets relevant to the development of Tekau Plus members and the development of NZ exporting.</p> <p>Research, analysis and preparation of documentation has occurred in conjunction with Cluster development work and has built upon and extended the work completed in this Output previous quarter, for example:</p> <ul style="list-style-type: none"> • Working through issues with potential cluster participants to develop clearer picture of their objectives and Tekau Plus fit (eg. Sheep milk); • Working through a detailed Research and Study programme and Project plans with approved cluster participants (eg. Watson & Son – ManukaMed); • Working on a business network approach to manage the communication between multiple cluster participants (eg. In Gourmet Food & ingredients); • FOMANA has reviewed the Tekau Plus Research Programs / Cluster proposition studies and a paper “Cycle of Innovation” will be presented to Board at October meeting.

Clustering. Facilitation, brokerage and specific analysis is undertaken for cluster projects.

3-4 cluster propositions are developed per annum, 8-10 cluster propositions over the contract period.

- Structural systems finalised for first cluster group
- Hui with key players on cluster development
- assist in developing the clusters' development and objectives

- o *Cluster systems finalised*
- o *Hui with potential cluster participants held*
- o *Formalise cluster members and implement cluster research and activities*

Cluster development continues to be the main priority for this quarter, evidenced by the additional cluster participants that have been approved for entry into the programme. Tekau Plus formally communicated Board decision to all the approved cluster participants and completed confidentiality agreements.

Each of the cluster members has committed their own resources to the programme. This was given in the 30 June 2009 six-monthly reports as being at least \$580,000. While this might be in-kind, some is in cash as, for example, members are required to pay for their own travel to meet with the board, or for the impending trip to China for the Food and Hotel China programme.

Tekau Plus engaged independent reviewers to conduct due diligence process and report to Board.

The following due diligence reports were completed in July - August

- Nature's Country Gold Ltd
- Maraeroa C Inc
- Toku Foods NZ Ltd
- Aotearoa Seafoods Ltd
- Navigator Tours Ltd
- Earth 174 degrees
- Taramea Ltd
- Biopolymer Network Ltd
- Biofarm Products Ltd

In September:

- Watson & Murray Ltd
- Watson & Son Ltd

Due diligence commissioned in September

- Waituhi Kuratau Trust
- Waituhi Kuratau Ltd
- Matatoki Farm Cheese Ltd

Clusters and businesses underway

Tekau Plus Clusters (9)	Tekau Plus Study Programs (13)	Tekau Plus Whanau (20 Business Brands)
1. Beverage	1. Wine	1. Tohu Wine
	2. Ale & Ingredients	2. Kono Wine
2. Gourmet Foods & Ingredients	3. Gourmet foods & High Quality Food ingredients – Asia Study	3. Taa Kawa
	4. Gourmet Food & Luxury Indigenous Visitor Experiences – America Study	4. MATA Beer
3. Kiwifruit / Horticulture & Fibre	5. Kiwifruit Indigenous Branding	5. Manuka Boosta Bar - Nature's Country Gold
	6. Harakeke –Ginseng Fibre proposition	6. Toku Gourmet
4. Apiary	7. Building a high value Apiary business - Northland Study	7. Aotearoa Seafoods Ltd (ASL)
	8. High Value Manuka Honey & Wound healing products	8. Aotearoa Seafoods Ltd (ASL)
5. Bio-Actives	9. Bio-Active Compounds and Proof of Concept Study	8. Navigator Tours Ltd
		9. Te Awanui Huka Pak
6. Dairy	10. Dairy Organic - Biofarm World Study	10. Maraeroa C Inc – Pa Harakeke
	11. High Value Sheep Milk – Protein Business Study	11. Biopolymer Network Ltd
7. Sheep & Beef	12. Sea Cucumber Study	12. Watson & Murray Associates
	13. Big Picture European Union (EU) Marketing Study	13. Watson & Son Ltd
8. Marine & Aquaculture		14. ManukaMed Ltd
9. Marketing & Future Food		Watson & Son Ltd
		Maraeroa C Inc
		Te Awanui Huka Pak
		15. Earth 174 degrees
		16. Taramea Ltd
		17. Biofarm
		18. Matatoki Farm Cheese - Waituhi Kuratau Trust and Waituhi Kuratau Ltd
		19. Whakatohea Maori Trust Board
		20. Big Picture Wine



Monitoring Report

for Installment Installment Three report due on 20/02/2009

APPLICATION/ORGANISATION DETAILS

SmartFund Ref: NDOE/HO.374.20209.16081
 Project Name: FOMANA Charitable Purposes Project
 Organisation Name: FOMANA Capital Ltd
 Address: 108 The Terrace,
 Wellington,

MONITORED DETAILS

Port Outcome	Increased awareness of the requirements of the new charity and tax compliance framework.
Output	Report completed on risk profile and systems, policies and audit model completed.
Success Indicators	Report completed within budget and timeline.
Status	Achieved

Risk Monitoring	
Risk	The demand for the new standards and audit models for Maori is not met.
Risk Comments	Risks continue to be monitored and effectively managed.
Status	Not Applicable

ASSESSOR COMMENTS

Report 3 dated March 2009 confirms the development of risk profiles, systems, policies and audit models as set out in the Contract. FOMANA has given an undertaking that the expenditure report will be forwarded to Te Puni Kōkiri by the end of the week.

QUALITY ASSESSOR COMMENTS

- (i) Report received is an original, dated and signed by an appropriate person
- (ii) I concur with Assessor's comments
- (iii) Agreed Output has been implemented and an expenditure is to be provided to TPK by 03 April 2009
- (iv) All risks continue to be monitored and managed appropriately - there are no new risks identified
- (v) The Project remains on track to be implemented within agreed timeframes
- (vi) The Report provides satisfactory evidence that agreed Outputs are being completed in a timely and appropriate manner.

INVESTMENT MANAGER COMMENTS

approved. I have spoken to Kim Skelton, will provide the Financial Report tomorrow

Assessor: *Berepiti L.*

Date: *01/04/09*

Quality Assessor: *Phil Yarnell*

Date: *11/4/9*

Investment Manager: *[Signature]*

Date: *11/4/09*

Released under the Official Information Act 1982

REPORT 3
March
2009

Charitable Purposes and Tax Compliance Systems Programme

RISK AND AUDIT REPORT 30 MARCH 2009

1. Risk Profile, Systems, Policies and Audit Model;
2. Risk Mitigations to ensure consistency and compliance with the charitable purposes framework.

Authors:

Wayne Mulligan MMgt
Rangimahora Reddy MBS (Accountancy)
Kim Skelton BA/LLB

Reviewers:

Peter Doolin LLB
Paul Morgan ExDipBus

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Contents

Introductory Section	3
Introductory Section	4
Purpose	4
Format	4
Disclaimer	5
Limitation	5
Methodology	6
Diagram 1: Report 3 Methodology	7
Definitions	8
Acknowledgements	9
Forward Programme and Outputs	10
Executive Summary	11
Executive Summary	12
Section Format	12
Context	12
Methodology	13
Summary of Risk Profile	14
Summary of Risk Mitigations	15
Conclusions	15
Opportunities for Pilot Organisations to benefit from Risk and Audit Phase	16
Section One: Risk Assessment Model Methodology	18
Section One: Risk Assessment Model Methodology	19
Section One Format	19
1.1 Policy Audit and Questionnaire	19
1.2 Risk Assessment Model	21
Section Two: Policy Audit and Risk Profile findings and Risk Mitigations	23
Section Two: Policy Audit and Risk Profile findings and Risk Mitigations	24
Format of Section Two	24
2.1 Policy Audit Findings	24
2.1.1 Legal Compliance Policy Audit	25
2.1.2 Governance Policy Audit	27
2.1.3 Financial Management Policy Audit	29
2.1.4 Information Management Policy Audit	31
2.1.5 Operations Policy Audit	33
2.1.6 Personnel Policy Audit	35
2.1.7 Summary of Policy Audit	37
2.2 Risk Profile Findings	38
2.3 Risk Mitigations to ensure consistency and compliance with charitable purposes framework	41
2.3.1 Operating outside "charitable purposes" as per Constitution	42
2.3.2 Misappropriation of Trust funds	43
2.3.3 Misapplication of Trust funds	44
2.3.4 Penalties applied by IRD for failure to comply with Charitable Purposes	45
2.3.5 De-registration by the Charities Commission	46
2.3.6 Loss of tax exemption	46
2.3.7 Loss of reputation	47
2.3.8 Legal Action against Trustees/Directors	48
2.3.9 Specific Obligations under the Charities Act 2005	49
2.3.10 Risk Mitigations and Standards for Risk Management and Compliance	50
Section Three - Pilot Organisation feedback and Conclusion	51
Section Three - Pilot Organisation feedback and Conclusion	52
3.1 Pilot Organisation Feedback	52
3.2 Conclusion and Lessons for next phase	53
Diagram 2: 'Charitable Purposes' Assurance Process Diagram	56
Appendices	57
Appendix 1: Policy Checklist for Māori Pilot Entities	57
Appendix 2: Charities Commission Registration Update	62
Bibliography and Information Sources	63

Risk & Audit
Report
Introduction

Charitable Purposes and Tax Compliance Systems Programme

Introductory Section

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kōkiri



Introductory Section

Purpose

The purpose of this Risk and Audit report is to fulfil the requirements of Outputs 6 and 7 in the Investment Agreement ("Agreement") dated 1 May 2008 between Te Puni Kokiri and FOMANA Capital Ltd. Schedule C of that Agreement sets out the reporting requirements for this Report:

Short Term Outcome	Outputs 6 and 7	Due Date
Increased awareness of the requirements of the new charity and tax compliance framework.	Report completed on risk profile and systems, policies, audit model completed.	30 March 2009 ¹
	Report completed recommending risk mitigations to ensure consistency and compliance with the charities / tax regime.	30 March 2009

Format

The report is presented in the following format:

<i>Introductory Section</i>	Including purpose, format, methodology, definitions, acknowledgments
<i>Executive Summary</i>	Summary of key information
<i>Section One</i>	Risk Assessment Model methodology
<i>Section Two</i>	Policy Audit and Risk Profile findings and Risk Mitigations
<i>Section Three</i>	Pilot Organisation feedback and Conclusions
<i>Appendices and Bibliography</i>	

¹ Delivery date renegotiated to 30 March 2009 (originally 20 Feb 2009) in order to deliver a comprehensive report.

Disclaimer

This report presents the Risk Assessment Model; the methodology, the inputs, and the outputs in terms of Risk Profiles and Risk Mitigations. It is prepared for Te Puni Kokiri only. It does not purport to provide specific legal advice for any entity on their legal obligations under or relating to the Charities Act 2005, the Income Tax Acts and or any other relevant legislation and or case law. It should not be relied upon by any entity accordingly.

Limitation

This report is limited to providing Te Puni Kokiri with an overview and should be seen as one of a series of reports that are being developed over two-years. This report does not provide in any detail the monitoring regime of the Charities Commission, the auditing role of the Inland Revenue Department, or detailed statistics on Māori charitable entities.

Methodology

The methodology for this report is based on the research and eight key risk areas that were identified in the previous two FOMANA Capital reports for this programme:

Report 1 31 May 2008	Preliminary research on the legal framework affecting Māori Charitable Entities under the Charities Act 2005 and the Income Tax Acts.
Report 2 30 September 2008	Research Report, Charitable Purposes and Tax Compliance Systems Programme.

A Risk Assessment Model (IT based tool) was developed and applied using data inputs (Policy checklist and Questionnaire) to produce the outputs for this Report, these being the Risk Profile and the Risk Mitigations for each of the eight risk factors that were identified in Research Report 2. For completeness, those factors are listed below:

1. Operating outside "charitable purposes" as per Constitution
2. Misappropriation of Trust funds
3. Misapplication of Trust funds
4. Penalties applied by IRD for failure to comply with Charitable Purposes
5. De-registration by the Charities Commission
6. Loss of tax exemption status
7. Loss of reputation
8. Legal Action against Trustees/Directors

The methodology for this Report is illustrated in the following diagram:

Diagram 1: Report 3 Methodology



Definitions

For the purposes of this report, the following working terms and definitions are used:

Term	Definition
Board	Includes boards of directors, trustees, or other governance entity
Charities Act 2005	Referred to as the Charities Act 2005 or the Act
Charities Commission	Referred to as the Charities Commission or Commission
Constitution	Governing documents such as the organisation deed, constitution or charter
Control	An existing process, policy, device, practice or other action that acts to minimize negative risk or enhance positive opportunities NOTE: The word 'control' may also be applied to a process designed to provide reasonable assurance regarding the achievement of objectives.
IRD	Referred to in the report as IRD or Inland Revenue
Māori charitable entities	Legal entities that are registered or eligible for registration with the Charities Commission and which are majority owned by Māori or whose members or beneficiaries, the majority of which are of Māori descent.
Plan	A proposed or intended method of getting from one set of circumstances to another. It is often used to move from the present situation, towards the achievement of one or more objectives or goals.
Policy	A deliberate plan of action to guide decisions and achieve a rational outcome(s).
Procedure	A series of prescribed steps followed in a definite regular order which ensure adherence to the guidelines set forth in the Policy to which the Procedure applies.

Term	Definition
Risk	The chance of something occurring that will, should the event occur, have an impact on the achievement of organisational objectives. It is measured in terms of the likelihood of something happening and the consequences if it happens.
Reputation Risk	The risk of damage to the organisation's credibility and reputation.
Compliance Risk	The risk of failing to meet government laws, regulations and standards.
Risk Management	A systematic and logical process of identifying, analysing, evaluating, treating, monitoring and communicating risks associated with any activity, function or process in a way that will enable an organisation to minimise losses and maximise opportunities.
Stakeholders	Those individuals, groups, institutions etc (either internal or external to the organisation) who are or perceive themselves to be affected by a decision or activity.

Acknowledgements

FOMANA would like to acknowledge Te Puni Kokiri for supporting the overall Charitable Purposes and Tax Compliance Systems Pilot Programme.

For this Risk and Audit phase of the pilot programme we gratefully acknowledge the work of consultants Tui Ora Ltd, in particular Rangimahora Reddy and Paul Tooley, whose respective financial risk management and IT skills were invaluable in the development of the Risk Assessment Model.

We wish to thank Peter Doolin and Paul Morgan for conducting the peer review and for providing quality control, particularly in terms of legal and strategic oversight.

Finally, we extend our sincere thanks and mihi to the eight pilot Māori charitable entities who obligingly, and often at short notice, provided information to develop the Risk Assessment Model. We value your insightful and practical feedback on the accessibility and benefits of the Risk Profile and potential improvements to the methodology.

The next phase of the pilot programme is to work with your organisations to develop case studies that will form part of the toolkit for the training phase in the second half of 2009, as outlined in the forward programme below.

Tenei te mihi nui a koutou.

- Ngati Rarua Atiawa Iwi Trust Board
- Taranaki Iwi Trust
- Taranaki PHO Ltd
- Te Aroha Medcare Ltd
- Te Atiawa Ki Te Upoko O Te Ika A Maui Potiki Trust
- Te Kaahui o Rauru
- Te Rau Pani Māori Mental Health Trust
- Tui Ora Ltd

Forward Programme and Outputs

The following table outlines the outputs for the next three reports.

Short Term Outcome	Outputs 8, 9 and 10	Due Date
Increased knowledge by Māori pilot entities and their beneficiaries of the policy, processes and requirements of the Charities Act 2005 and tax regime.	Report of case studies completed and generic compliance and audit model developed.	30 June 2009
	Training developed and provided to Māori entity team on application of compliance/audit model.	28 August 2009
	Training delivered to beneficiaries of each pilot entity on compliance and audit model.	15 December 2009

Risk & Audit
Report
Executive
Summary

Charitable Purposes and Tax Compliance Systems Programme

Executive Summary Section

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kōkiri



Executive Summary

Section Format

- Context
- Methodology
- Summary of Risk Profile
- Summary of Risk Mitigations
- Conclusions
- Diagram 2: Charitable Purposes Assurance Process

Context

This report is the third in a series of reports for the Charitable Purposes and Tax Compliance Systems Pilot Programme and it is important to read this document in the context of the previous reports.²

FOMANA acknowledges the commitment made to this programme by each of the eight pilot Māori charitable entities (organisations). An 'assurance of confidentiality' was provided to all participating organisations and we have collated the data for this report so that it does not specifically identify individual organisations, which are reported only as Organisation 1, 2 etc. We further acknowledge that all eight organisations indicated an openness and willingness to further improve their own systems and knowledge, conducting in essence, a self assessment programme.

There are three key sections covered by the report:

<i>Section One</i>	Risk Assessment Model methodology
<i>Section Two</i>	Policy Audit and Risk Profile findings and Risk Mitigations
<i>Section Three</i>	Pilot Organisation feedback and Conclusions

² See Methodology section page 6 for details of Report 1 and Report 2.

Methodology

A Risk Assessment Model (IT based tool) was developed and applied using data inputs (Policy checklist and Questionnaire) to produce the two key outputs for this Report, the Risk Profile and Risk Mitigations relative to each of the eight risk factors listed:

1. Operating outside “charitable purposes” as per Constitution
2. Misappropriation of Trust funds
3. Misapplication of Trust funds
4. Penalties applied by IRD for failure to comply with Charitable Purposes
5. De-registration by the Charities Commission
6. Loss of tax exemption status
7. Loss of reputation
8. Legal Action against Trustees/Directors

The Methodology is illustrated by this Diagram.











Summary of Risk Profile

Risk Profile

A “traffic lights” system was developed to convey the risk profile, with red being an indicator of a “high risk profile”, amber a “medium risk profile”, and green a “low risk profile” (see Table 1 below). Two organisations had very low levels of risk. These two organisations illustrated sound business practice, with solid governance and management and a strong focus on compliance systems. Two other organisations also have low risk levels. However, four organisations have the opportunity to considerably improve their systems. It is noted that one organisation was ranked with the very highest risk profile.

The organisations with the highest risk profile are new organisations (less than 5 years old) with a small resource base, yet with similar compliance obligations and costs as the larger, more mature organisations which have higher levels of resourcing and financial sustainability. As smaller organisations, they do not have full time personnel to provide operational management or to put in place risk management systems, policies and controls. These organisations mitigate risks by limiting payments to third parties and sometimes by relying on unpaid assistance provided by individual members with the requisite professional skills.

Table 1: Consolidated Risk Profile Results

TABLE 1	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8
Consolidated Risk Profile Results								
Score (%)	24%	8%	10%	23%	55%	90%	42%	38%
Ranking	4	1	2	3	7	8	6	5

Summary of Risk Mitigations

The Risk Mitigations section highlighted the following as key mitigations for assisting organisations to maintain registration:

- Ensuring clearly communicated and easily accessible policies and systems to minimize the risk of non-compliance (see Opportunities section and Diagram 1 on following pages);
- Providing information to beneficiaries on the Charities Act 2005; and
- Raising awareness and understanding of the impact of non-compliance with charitable purposes on the organisation, its staff, the board and beneficiaries; and
- Training of governors / officers, leaders, and staff of Māori charitable entities on their obligations in relation to the charitable purposes and maintenance of charitable status for tax compliance.

Conclusions

Feedback from Pilot Organisations

Most of the pilot participants spoken to said that their organisation had benefited from the Risk and Audit process and that their risk profile was not unexpected. The consolidated risk profile enabled them to easily determine where they were placed in the group and to understand their individual organisational risk profile. The use of the traffic lights system was seen as a positive means for conveying risk.

Other commented about the process and suggested room for improvement in these areas:

- Closer timing between completion of the questionnaire and the policy checklist;
- More time to complete the policy checklist;
- Maintaining a clear link between charitable registration and the risk profile.

Participant feedback indicated the preferred methods for delivery of training as:

- Customized to organisation needs;
- Targeted at two different levels being governance and management;
- Use of Case Studies in illustrating concepts; and
- Face to Face training.

Opportunities for Pilot Organisations to benefit from Risk and Audit Phase

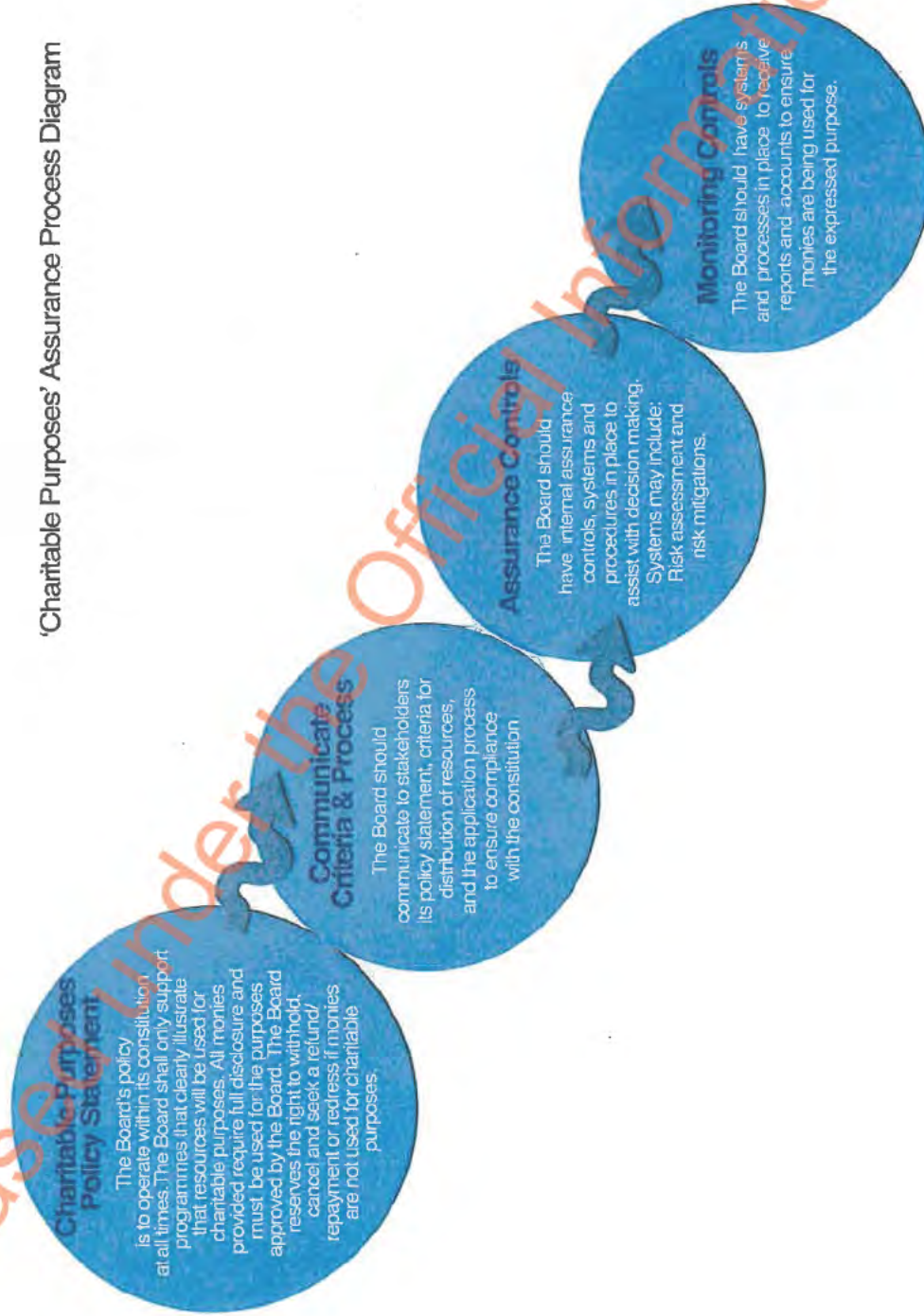
1. There is an opportunity for the pilot organisations to build on the results of this report by communicating clearly to stakeholders (including beneficiaries) what it means to operate as a charitable entity. The fundamental starting point is that the governors / officers must know 'what and why' their organisation exists. In short, charitable entities exist for their charitable purposes.
2. Governors / Officers should as a minimum:
 - a. Know exactly how to operate their organisation within the parameters of the Constitution, and in particular, the charitable purposes.
 - b. Communicate the charitable purposes and requirements of the Constitution to their stakeholders in an unambiguous manner so as to set framework for engagement.
 - c. Establish criteria, processes and controls so that stakeholders are absolutely clear on the reporting requirements and accountability obligations for any funds or distributions made to them by the organisation.
 - d. Establish internal administration checks and accounting systems to ensure any application for funds complies with the Constitution and its charitable purposes.
 - e. Use internal decision making tools to assist with decision making, including a 'charitable purpose' risk assessment of the application for funds and what specific mitigations will be required, including for example, reports and invoices.³

These 'assurance controls' will help the organisation to mitigate risk, and to maintain its tax exemption status. The diagram on the following page illustrates this Assurance Process.

³ Refer to Section Three of the Report for extensive list of Risk Mitigations.

Diagram : 'Charitable Purposes' Assurance Process Diagram

'Charitable Purposes' Assurance Process Diagram



Risk & Audit
Report
Section One

Charitable Purposes and Tax Compliance Systems Programme

Section One

Risk Assessment Model Methodology

- Policy Audit and Questionnaire
- Risk Assessment Model

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kōkiri



Section One: Risk Assessment Model Methodology

Section One outlines the inputs and methodology used to develop the Risk Assessment Model, those inputs being, the Policy checklist data and the Questionnaire data.

Section One Format

1.1 Policy Audit and Questionnaire

1.2 Risk Assessment Model

1.1 Policy Audit and Questionnaire

A Policy Checklist formed the basis of the policy audit. The checklist identified one hundred individual policies these were split up into the following six sections:

Section One:	Legal Compliance
Section Two:	Governance
Section Three:	Financial Management
Section Four:	Information Management
Section Five:	Operations
Section Six:	Personnel

Responses given by pilot participants using the policy checklist tool were either Yes or No, with the following explanations ticked if there was no approved policy in place:

- A. Considered but not relevant to organisation;
- B. Under consideration but not yet approved;
- C. Never considered but intend to do so in future;
- D. Insufficient information or resources to develop policy; and
- E. Other reason(s).

Other Reasons generated by the pilot participants were recorded as follows:

- CE. Issue was not addressed in the form of a separate policy but was covered elsewhere eg. Constitution or another policy; and
- NYA. Policy was in draft but had not been approved at the time of completing the checklist.

The policy checklist was distributed by email with a two week timeframe taken to respond. The intention of the checklist was to augment the data already collected so that a Risk Profile for each of the eight pilot entities could be determined. Due to the timeframe and differing stages of development across the participating entities only seven of the eight were able to furnish completed checklists.

The intention of the policy checklist was to augment the data already collected so that a Risk Profile for each of the eight pilot organisations could be determined. In the development of the risk profiling and risk mitigation tools the following Standards Australia publications have been consulted:

- Australian/New Zealand Standard (AS/NZS) 4360:2004 Risk management;
- HB 436, Risk Management Guidelines—Companion to AS/NZS 4360:2004;
- Australian Standard (AS) 3806-2006 Compliance Programs;
- Proposed ISO 31000

As with the previous questionnaire conducted during the research phase of this programme, an ‘assurance of confidentiality’ was provided to the eight pilot organisations that all information received in the policy audit would remain confidential to the project. All reports have therefore been written in a generic manner and will not identify any particular organisation or individual.

All completed policy checklists have been securely stored in an electronic database.

Questionnaire

The second input tool used to develop the Risk Assessment Model was the data questionnaire, comprising a series of fifty five questions split up into seven sections as follows:

1. Understanding role & functions of the Charities Commission
2. Understanding role & functions of Inland Revenue Department
3. Organisation’s Constitution and its Requirements
4. Organisation’s Activities and Maintaining Tax Exempt Status
5. Risk Understanding, Identification, Management, and Mitigation
6. Other Organisation Data
7. Participant Feedback

There were two main types of questions used in this tool, they were:

- a. Multiple choice questions - where one of many answers needed to be selected (noting that a maximum of four choices instead of five were used); and
- b. Comment box questions - where comment boxes allowed for information to be entered.

The Questionnaire provided the focus of a two to three hour semi-structured interview with each participant. The interviews were held over a period of three weeks and participants were provided the questionnaire in advance along with the FOMANA report dated 31 May 2008: Preliminary research on the legal framework affecting Māori Charitable Entities under the Charities Act 2005 and the Income Tax Act.




1.2 Risk Assessment Model

A questionnaire and a policy checklist were the input tools used to gather information from pilot participants to develop a risk assessment model.

The risk assessment model was then applied to determine the risk profile of each pilot. This risk profile is intended to be a positive approach to identifying opportunities for action rather than a negative punitive approach. Important to note that the risk profile of an organisation will change as changes in the organisation occur (staff, activities etc) hence the risk profile identified here is only a snapshot of the organisation at a certain point in time.

The risk assessment model focuses on the responses by participants to closed ended questions within both the questionnaire and policy checklist. Numerical values were assigned to the response for each of the closed ended questions included in the model. The general theme behind the values was the lower the value scored by an organisation the lower the risk.

The "traffic lights" system has been used as a mode for indicating organisation risk profile:

GREEN "low risk profile"	AMBER "medium risk profile"	RED "high risk profile"
		

It should be noted that this tool is an indicator only based on organisations responses to set questions within a limited timeframe. As mentioned earlier it is intended to be a positive approach to identifying opportunities to address risk.

Risk profiles were provided for each organisation on the basis of:

- Questionnaire responses;
- Policy Checklist responses (overall and by each section); and
- Consolidated responses to the above two.

An “assurance of confidentiality” was provided to all participating organisations. All information received in the course of the interviews, the completed questionnaires and policy checklists will remain confidential to the project. In addition all reports are written in a generic manner and will not identify any particular organisation or person. As a result the groups in the presentation of findings back to the pilot have been labelled Org 1, 2 etc to maintain anonymity.

Further information on the questionnaire and policy checklist tools used to gather information from pilot participants to develop a risk assessment model for the eight pilot Māori charitable entities is presented below.

Charitable Purposes and Tax Compliance Systems Programme

Section Two

Policy Audit and Risk Profile findings
and Risk Mitigations

- Policy Audit findings
- Risk Profile findings
- Risk Mitigations to ensure consistency and compliance with charitable purposes framework.

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Section Two: Policy Audit and Risk Profile findings and Risk Mitigations

Format of Section Two

2.1 Policy Audit findings

2.2 Risk Profile findings

2.3 Risk Mitigations to ensure consistency and compliance with charitable purposes framework

2.1 Policy Audit Findings

The findings of the policy audit will be presented using two column graphs and a summary narrative for each of the six policy sections the policy checklist, as follows:

2.1.1 Legal Compliance Policy Audit

2.1.2 Governance Policy Audit

2.1.3 Financial Management Policy Audit

2.1.4 Information Management Policy Audit

2.1.5 Operations Policy Audit

2.1.6 Personnel Policy Audit

2.1.7 Summary of Policy Audit

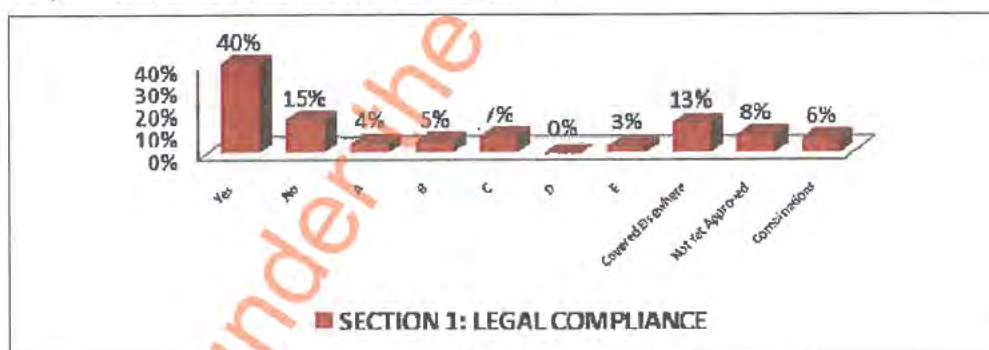
Explanation for interpreting Graph One

The first graph shows overall responses for policies in each section and provides an insight into the number (by percentage) of organisations that have approved policies in place and provides a rationale for those that do not. The responses provided in the first graph for each section indicate the following:

Yes	Policy to address the area exists and has been approved
No	Used where no other response has been identified
A	Considered but not relevant to organisation
B	Under consideration but not yet approved
C	Never considered but intend to do so in future
D	Insufficient information or resources to develop policy
E	Other reason (s)
CE	Issue covered elsewhere in another document/policy
NYA	Policy drafted but not yet approved
Combinations	A response that includes any two of the above except Yes and No (eg. CE & D)

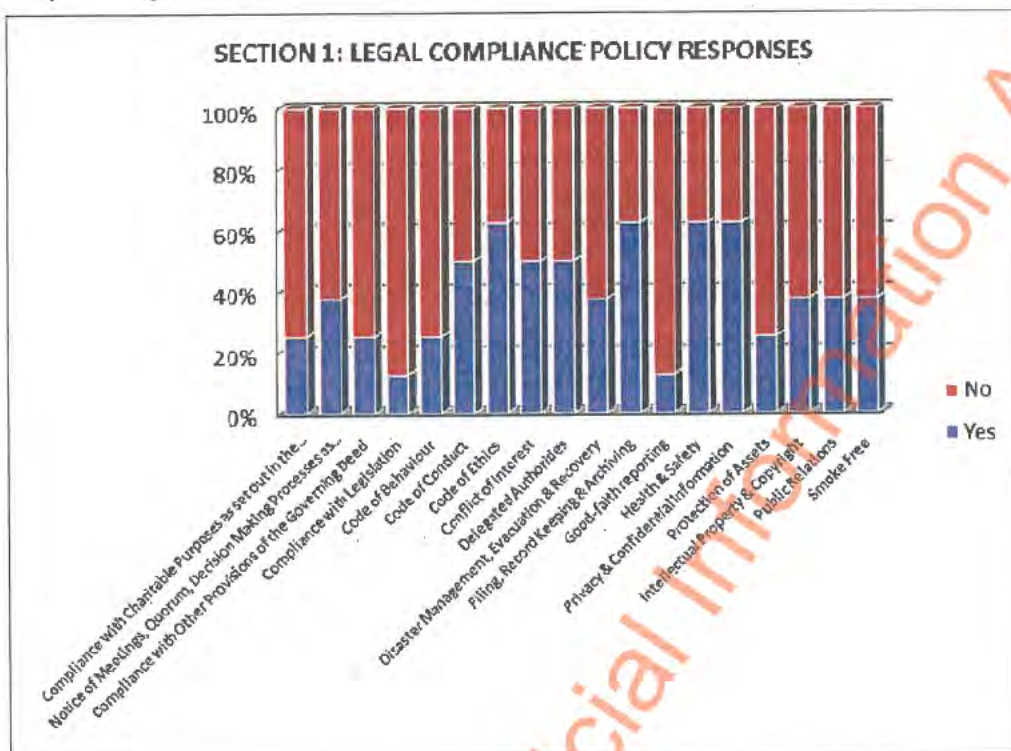
2.1.1 Legal Compliance Policy Audit

Graph 1: Legal Compliance Overall Responses



Graph 1 indicates that whilst only 40% of organisations have approved policies, 13% indicate policies in this area are covered elsewhere in other documents or policies with a further 8% of responses indicating the policies are in place but are yet to be approved. A point to note is that across the entire checklist this area had the highest number of 'Covered Elsewhere' responses.

Graph 2: Legal Compliance Policy - Individual Policy Responses



Graph 2 identifies the most popular policies approved and in place as the Code of Ethics, Filing, Record Keeping & Archiving, Health & Safety as well as Privacy & Confidential Information.

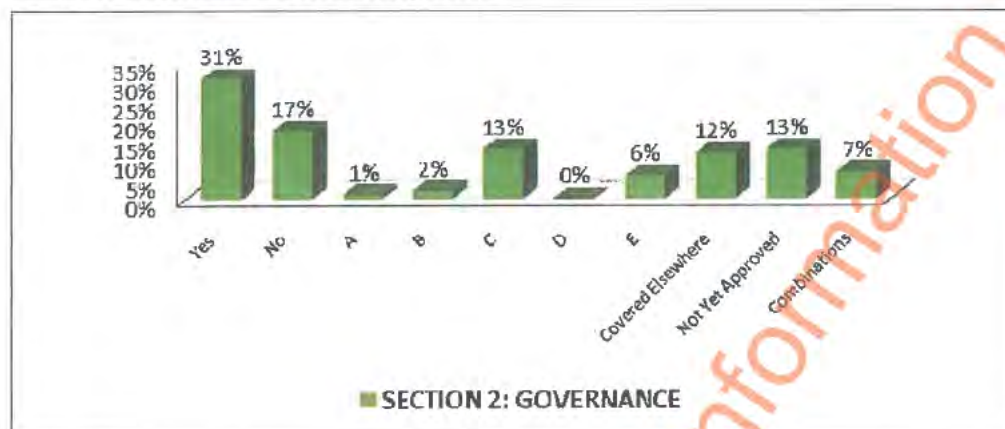
The areas for which there were very few single dedicated approved policies in place were Compliance with Legislation and Good faith reporting.

Summary of Legal Compliance Policy Audit

Legal compliance is one of the three critical factors identified by the Panel on the Nonprofit Sector Report (US) "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations", October 2007. The presence of elements that address legal compliance within an organisation will assist charitable entities in complying with their relevant legal obligations. However, the absence of such will naturally pose a possible risk for non-compliance as well as potentially support a need for education/training packages.

2.1.2 Governance Policy Audit

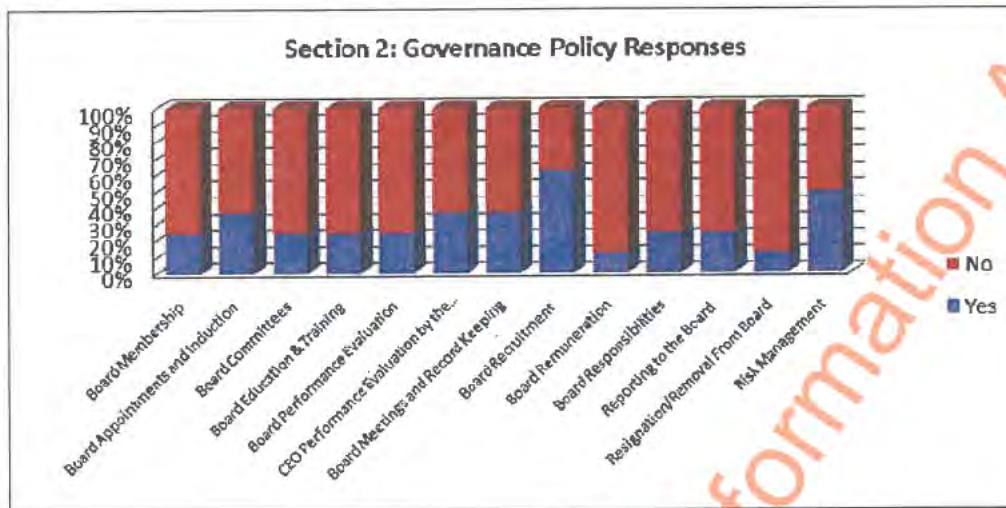
Graph 1: Governance Overall Responses



Graph 1 indicates that whilst only 31% of organisations have approved policies, 12% indicate that policies in this area are covered elsewhere in other documents or policies with a further 13% of responses indicating the policies are in place but are yet to be approved.

A point to note is that across the entire checklist this area had the lowest number of responses indicating the policy was approved and in place, the highest number of responses with no policies in place and no explanation and the second highest number of responses indicating the policy was covered elsewhere.

Graph 2: Governance Policy - Individual Policy Responses



Graph 2 identifies the most popular policies approved and in place as Board Recruitment and Risk Management. The areas for which there were very few single dedicated approved policies in place were Board Remuneration and Resignation/Removal from the Board.

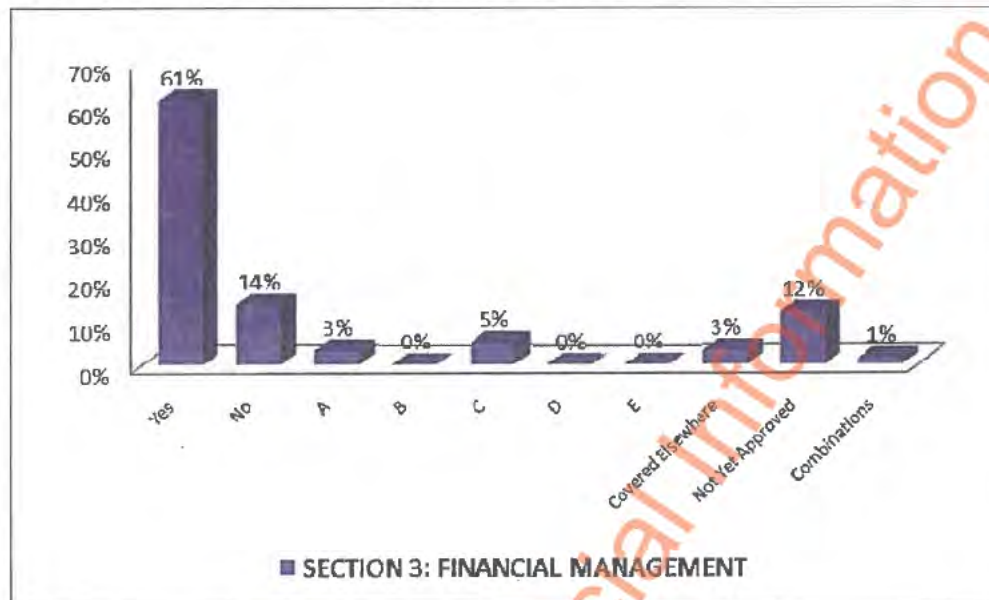
Summary of Governance Policy Audit

Governance is another one of the three critical factors identified by the Panel on the Nonprofit Sector Report (US) "Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations", October 2007.

The presence of elements that address governance will assist the board in fulfilling its supervision and governance responsibilities effectively. However, the absence of such will naturally identify areas of possible risk of non-compliance as well as potential areas of development needed via education/training packages.

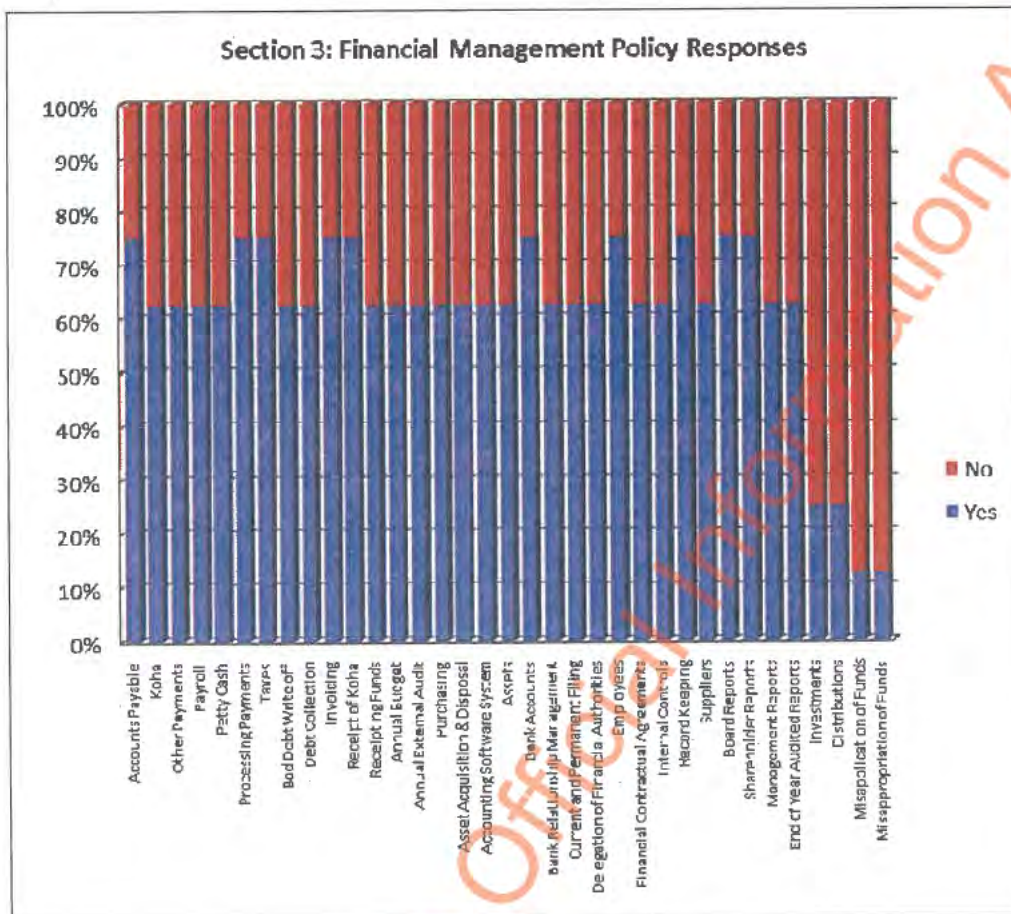
2.1.3 Financial Management Policy Audit

Graph 1: Financial Management Overall Responses



Graph 1 indicates that 63% of organisations have approved policies, the highest result across all of the policy areas. A further 12% of responses indicated that the policies are drafted but are yet to be approved.

Graph 2: Financial Management - Individual Policy Responses



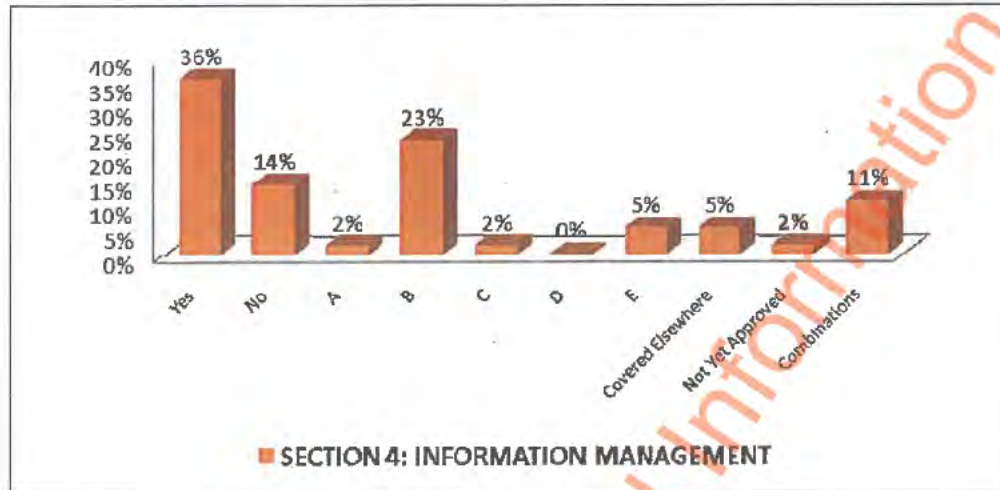
Graph 2 identifies a number of popular policies approved and in place with Misapplication of Funds and Misappropriation of Funds highlighted as areas of need.

Summary of Financial Management Policy Audit

The third key component identified by the Panel on the Nonprofit Sector Report is to recognize if the organisation can demonstrate robust financial stewardship of resources through systems, policies and/or processes. Financial Management is also particularly relevant given the results of a study acknowledged in Report 2 that identified weak financial systems and processing as the highest ranking factor for non-compliance by registered charities. The absence of these elements from an entity's operations will give rise to possible risk/s of non-compliance as well as potential areas of development needed via additional capacity and/or education/training packages.

2.1.4 Information Management Policy Audit

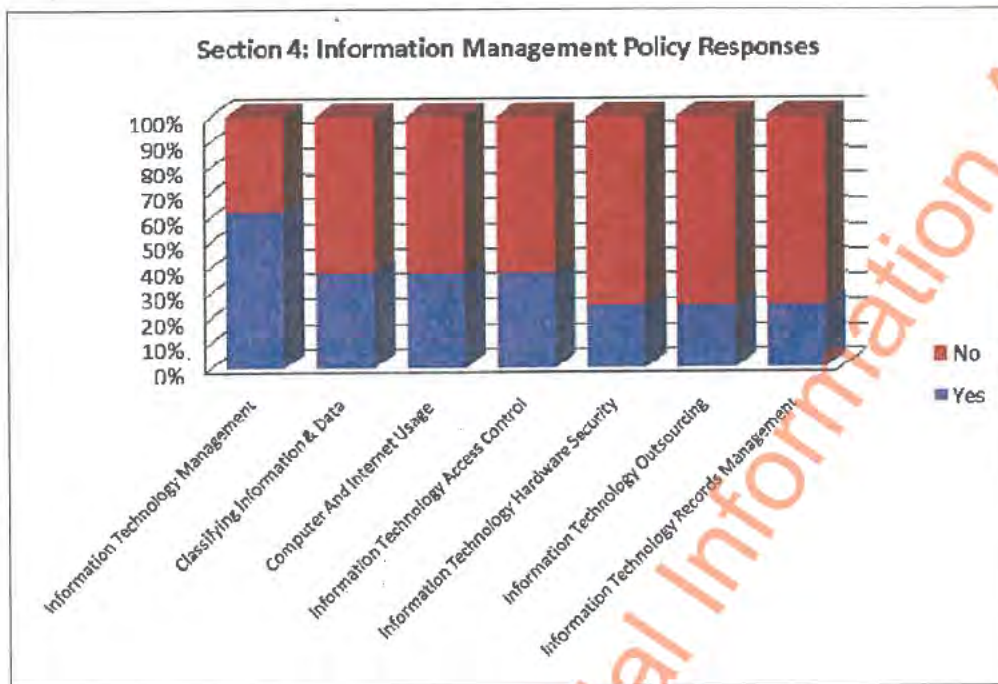
Graph 1: Information Management Overall Responses



Graph 1 indicates that only 36% of organisations have approved policies, with 5% indicate policies in this area are covered elsewhere in other documents or policies and a further 2% of responses indicating the policies are in place but are yet to be approved.

A point to note is that across the entire checklist this area had the highest number of responses indicating "B" the policy was under consideration but not yet approved.

Graph 2: Information Management Policy - Individual Policy Responses



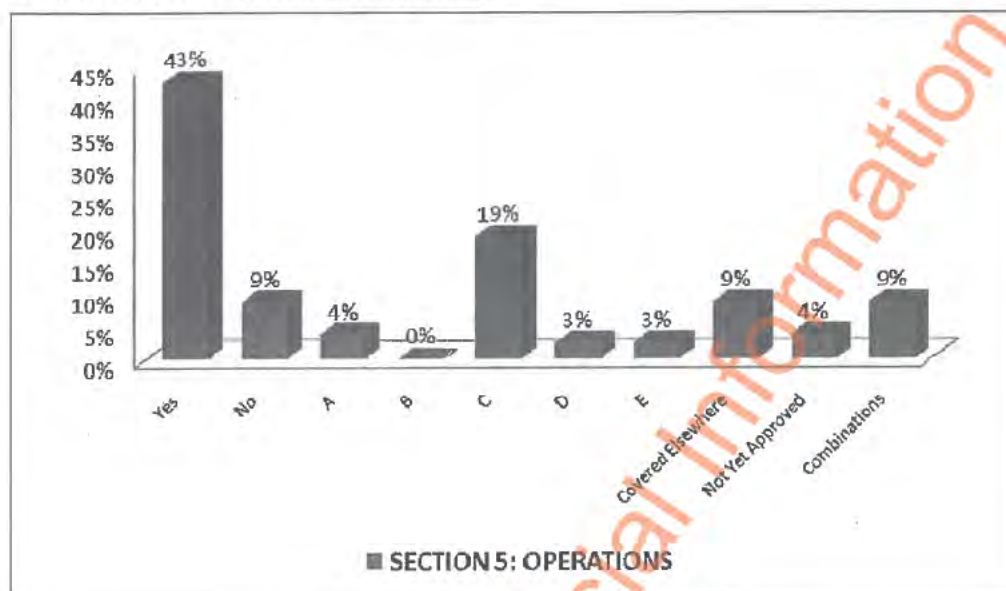
Graph 2 identifies the most popular policy approved and in place as Information Technology Management. The areas for which there were very few single dedicated approved policies in place were Information Technology Hardware Security, Outsourcing and Records Management.

Summary of Information Management Policy Audit

Information Management is vital for good governance and the efficient management and operation of any organisation. Poor information management has serious implications and risk to the security of records/information, access issues and the ability to operate effectively. This in turn poses a possible risk for non-compliance as well as potentially supports a need for education/training packages.

2.1.5 Operations Policy Audit

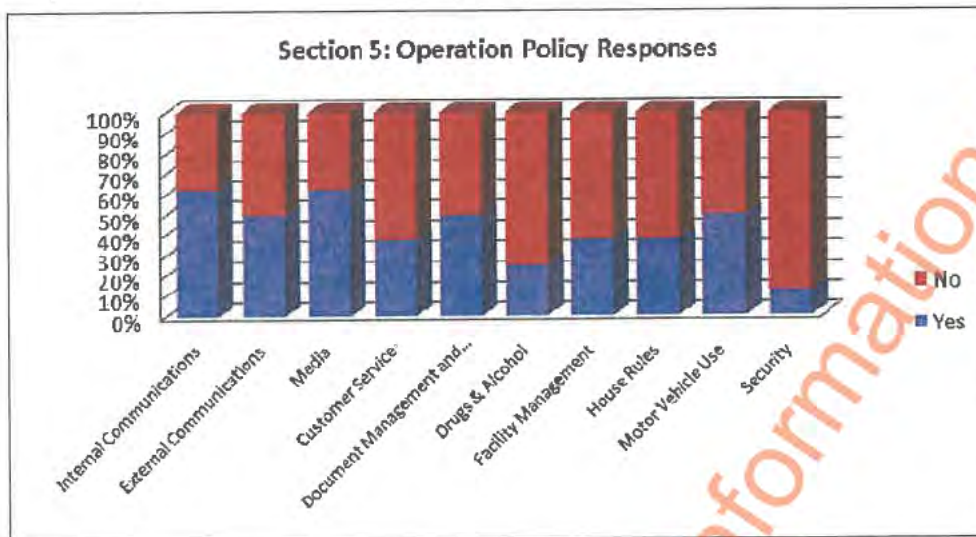
Graph 1: Operations Overall Responses



Graph 1 indicates that whilst only 43% of organisations have approved policies, with 9% indicating that policies in this area are covered elsewhere in other documents or policies and a further 4% of responses indicating the policies are in place but are yet to be approved.

A point to note is that across the entire checklist this area had the highest number of responses indicating "C", the policy was never considered, but the organisation intends to do so in the future.

Graph 2: Operations - Individual Policy Responses



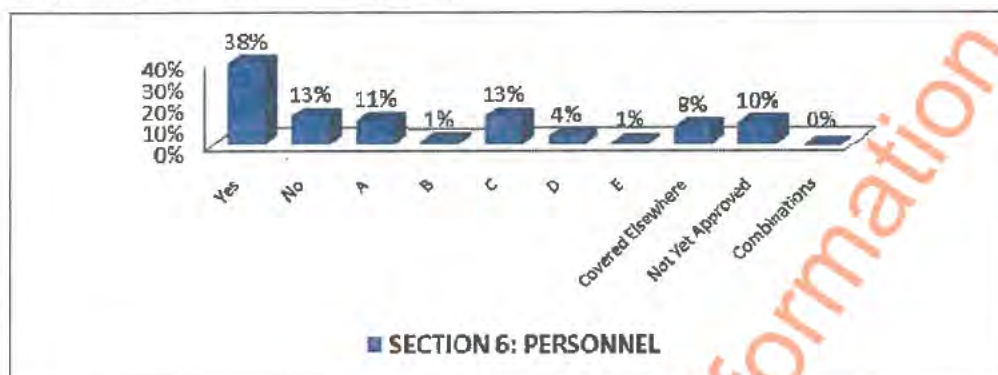
Graph 2 identifies the most popular policies approved and in place as Media and Internal Communications. The area for which a need is apparent is Security.

Summary of Operations Policy Audit

This section includes policies that are important in supporting the organisation and its operations but that are not covered under any of the other sections.

2:1.6 Personnel Policy Audit

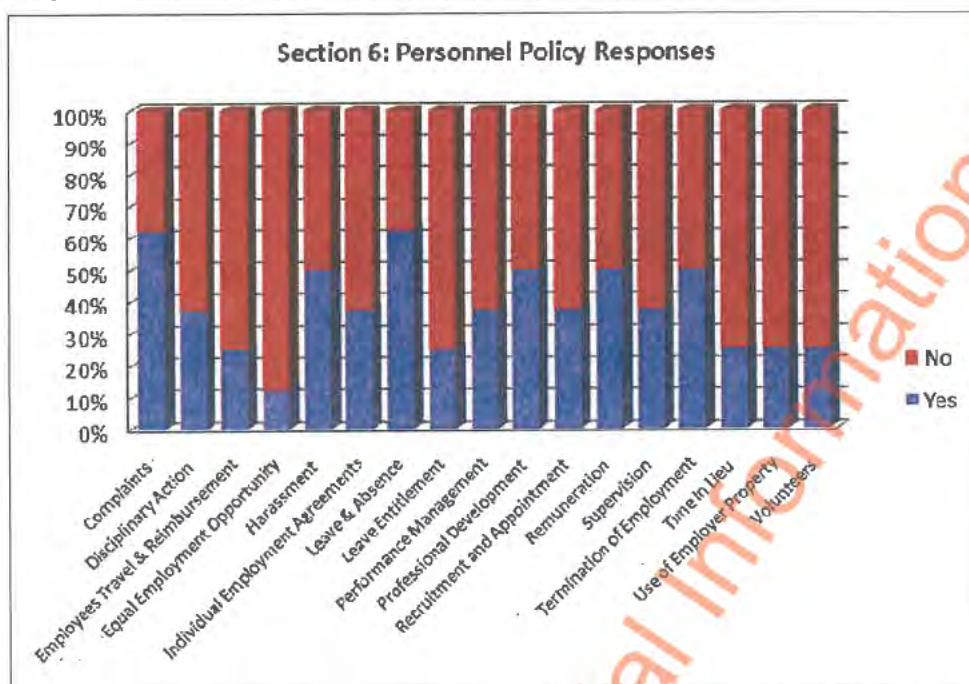
Graph 1: Personnel Overall Responses



Graph 1 indicates that whilst only 38% of organisations have approved policies, with 8% indicating that policies in this area are covered elsewhere in other documents or policies and a further 10% of responses indicating the policies are in place but are yet to be approved.

Points to note are that across the entire checklist this area had the highest number of responses indicating "A", the policy was considered but is not relevant for the organisation and the second highest number of responses indicating "C", the policy was never considered but the organisation intends to do so in the future. This fits with the general findings that the smaller and less resourced organisations do not have paid personnel but may do so in future subject to increased resourcing.

Graph 2: Personnel Policy - Individual Policy Responses



Graph 2 identifies the most popular policies approved and in place as the Complaints and Leave & Absence.

The areas for which there were very few single dedicated approved policies were Equal Employment Opportunity, Employees Travel & Reimbursement, Leave Entitlement, Time in Lieu, Use of Employers Property, and Volunteers.

Summary of Personnel Policy Audit

Personnel are a key component to any organisation. Apart from providing the skill base, personality and operational capacity of an organisation, they can greatly assist compliance with charitable purposes.

2.1.7 Summary of Policy Audit

The table below summarises the overall responses by Explanation:

Explanation for Policy approved or not	Policy Area with Highest Response
YES: Policy approved	Financial Management 63%
A: Considered but not relevant to organisation	Personnel 11%
B: Under consideration but not yet approved	Information Management 23%
C: Never considered but intend to do so in future	Operations 19%
D: Insufficient information or resources to develop policy	Personnel 4%
E: Other reason (s)	
CE: Issue covered elsewhere in another document/policy	Legal Compliance 13%
NYA: Policy drafted but not yet approved	Governance 13%
Combination: A response that includes any two of the above except Yes and No (eg. CE & D)	Information Management 11%

The policy audit results above indicate that most of the pilot organisations have understood the importance of having financial management policies. However, there are significant gaps in the other policy areas and this raises the risk to compliance with charitable purposes.

In particular, it would appear that support is needed in the Governance policy area, with only 31% of organisations having approved governance policies. While this is a small sample of organisations, it is likely that the situation would be similar, if not worse, for the many of hundreds of Maori charitable entities that were identified in Report 1.

Policies and associated procedures are but one means to mitigate risk. Other mitigations are detailed in section 2.3 Risk Mitigations.

2. 2 Risk Profile Findings

This section indicates the risk profile according to overall achievement (combines the policy and questionnaire responses).

The risk profile is identified using:

- traffic light indicators;
- the score achieved by the organisation as a percentage (of the total score achievable - noting the lower score the lower the risk);
- rankings (where the organisation ranks in relation to the rest of the pilot group); and
- a radar chart was used as a quick visual for indicating individual risk profile, as well as where an organisation lay in relation to other entities in the pilot (noting the closer to the centre an organisations risk profile lay the lower the risk profile).

An “assurance of confidentiality” was provided to all participating organisations as a result the groups have been labelled Org 1, 2 etc to maintain anonymity in this report.

Consolidated Risk Profile

Table 1: Consolidated Risk Profiles









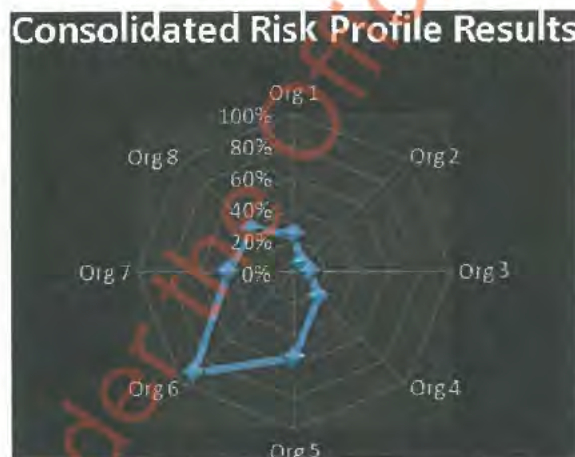
TABLE 1	Org 1	Org 2	Org 3	Org 4	Org 5	Org 6	Org 7	Org 8
Consolidated Risk Profile Results								
Score (%)	24%	8%	10%	23%	55%	90%	42%	38%
Ranking	4	1	2	3	7	8	6	5

Table 1 provides the means for displaying the risk profile for each organisation in the pilot. The organisation ranked 1st with the lowest risk profile overall in the pilot is Org 2 with Org 6 having the highest risk profile. There are a number of reasons for this difference in risk profile but a key factor is the availability of resources (personnel etc), length of time in operation and size.

Radar Graph: Consolidated Risk Profile Results



The Radar Graph above visually reinforces the results presented in Table 1. It permits easy identification of those that do, and do not, gravitate towards the centre (noting the closer to the centre an organisation's risk profile is, the lower the risk profile). It also gives a good overall indication of where the group sits in terms of risk profile.

Summary of Risk Profile Findings

By consolidating the two data inputs (policy audit and questionnaire), some observations and conclusions can be made, for example:

- There is a high level of understanding of obligations for maintaining registration as well as understanding of six of the eight risk factors.
- Areas where more information is needed to enhance the level of understanding are:
 - the role of the Inland Revenue
 - Operating outside “charitable purposes” as per Constitution (risk factor 1)
 - De-registration by the Charities Commission (risk factor 5)
- Investment Advisors were identified as the least used advisors. This is not surprising given the relatively small size and resource base of some of the pilot organisations.
- All pilot organisations used Lawyers, Accountants and Auditors.
- Whilst half of the pilot organisations review their Constitution annually or continuously, the other half have not conducted a review. This is not surprising as 50% of the pilot organisations have only been operating for up to five years.
- Although all organisations have a minimum of one paid staff member, more than half the organisations have unpaid staff or governors /officers. This last factor has definitely contributed to four of the eight pilot organisations receiving a medium - high risk profile.

2.3 Risk Mitigations to ensure consistency and compliance with charitable purposes framework

The Risk Mitigations presented in the following tables are aligned to the eight risk factors and are presented in the following format:

Potential Risk Factor	
Potential Impact	Steps to Mitigate Risk

- 2.3.1 Operating outside “charitable purposes” as per Constitution
- 2.3.2 Misappropriation of Trust funds
- 2.3.3 Misapplication of Trust funds
- 2.3.4 Penalties applied by IRD for failure to comply with Charitable Purposes
- 2.3.5 De-registration by the Charities Commission
- 2.3.6 Loss of tax exemption status
- 2.3.7 Loss of reputation
- 2.3.8 Legal Action against Trustees/ Directors

Section 2.3.9 outlines specific obligations under the Charities Act 2005 and key strategies to meet those obligations:

- ensure their officers remain qualified (as per the Act and the entity’s Constitution) throughout their period of service to the entity;
- ensure the Commission are notified of any changes to the Constitution or officers (section 40 of the Act);
- ensure an annual return is submitted to the Commission within the appropriate timeframe (sections 41 & 42 of the Act); and
- where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request (section 39 of the Act).

Section 2.3.10 places Risk Mitigations within the context of Australian/New Zealand Standards for Risk Management and Compliance.

2.3.1 Operating outside “charitable purposes” as per Constitution

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Financial challenge (loss of cashflow) • Loss of contracts (as a result of funders excluding on the basis no longer “not for profit”) • Loss of tax exemption • Pay back taxes, possibly penalties, interest and then subject to payment of tax thereafter • Reputation risk-several levels, personal, professional etc • Adverse media attention 	<ul style="list-style-type: none"> • Compliance monitoring and reporting • Educate all Trustees of charities requirements • Ensure all staff and all other important stakeholders are aware of the charitable purposes and that this information is readily accessible • Ensure the Constitution is reviewed by the organisation regularly • Ensure all business planning documents align to the charitable purposes of the organisation • Ensuring robust processes and policies are implemented, are up to date and followed • Ensuring the Commission are notified of any changes to the rules, deed or constitution or officers • Mechanism for reviewing all new activities against Constitution, and contractual obligations • Operating within core activities as identified in the Constitution

2.3.2 Misappropriation of Trust funds

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Potential for organisation insolvency • May not be able to meet contractual obligations • Impact on providers (related entities) and their services • Staff obligations unable to be met • Backlash from beneficiaries • Legal action against governance entity • Adverse media attention 	<ul style="list-style-type: none"> • Annual external audit • Audit & Risk Committee • Board with business acumen & skill levels • Clear lines of Delegated Authorities • Ensuring an annual return is submitted to the Commission within the appropriate timeframe • Ensuring officers remain qualified (as per the Act and the Constitution) throughout their period of service to the entity • Ensuring robust financial processes and policies are implemented, are up to date and followed • Financial planning, reporting and monitoring done on a regular and timely basis • Good internal financial controls eg. Separation of duties, dual signatories, documented transactions etc • Proactive communication mechanisms for dealing with relevant entities eg. beneficiaries, funders etc • Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request

2.3.3 Misapplication of Trust funds

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Backlash from beneficiaries • De-registration (loss of charitable status) • Loss of tax exemption • Loss of contracts (funding) • Loss of reputation • Legal action against governance entity 	<ul style="list-style-type: none"> • Having a clear and comprehensive understanding of what is allowed within the charitable purposes framework • Checking the credentials of organisations that are sub-contracted • Ensuring an annual return is submitted to the Commission within the appropriate timeframe; and • Ensuring robust distribution processes and policies are implemented, kept up to date and followed eg. Signed acceptance of terms by recipient, payments on invoice to third parties only etc • Proactive communication mechanisms for dealing with relevant entities eg. beneficiaries, funders etc • Training of beneficiaries • Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request.

2.3.4 Penalties applied by IRD for failure to comply with Charitable Purposes

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Backlash from beneficiaries • Financial challenge (loss of cashflow) • Loss of contracts (as a result of funders not preferring a non "not for profit") • Pay back taxes, possibly penalties, interest and then subject to payment of tax thereafter • Reputation risk-several levels, personal, professional etc • Legal action against governance entity • Adverse media attention 	<ul style="list-style-type: none"> • Compliance monitoring and reporting • Educate all Trustees of charities requirements • Ensuring robust processes and policies are implemented, kept up to date and followed • External control measures • Financial planning, reporting and monitoring done on a regular and timely basis • Mechanism for reviewing all new activities against Constitution, and contractual obligations • Operating within core activities as identified in the Constitution • Proactive communication and relationship management strategies with relevant groups • Staff responsibility for compliance clearly identified with appropriate resources allocated

2.3.5 De-registration by the Charities Commission;

2.3.6 Loss of tax exemption

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Financial challenge (loss of cashflow) • Loss of Mana • Long-term stigma of de-registration • Pay back taxes and then subject to tax thereafter • Reputation Loss • Reputation risk-several levels, personal, professional etc • Legal action against governance entity 	<ul style="list-style-type: none"> • Annual external audit • Board of Governors / Officers appointed or elected with high levels of business acumen • Compliance monitoring and reporting • Educate all Trustees, beneficiaries and staff of charities requirements • Ensuring an annual return is submitted to the Commission within the appropriate timeframe; and • Ensuring officers remain qualified (as per the Act and the entity's Constitution) throughout their period of service to the entity; • Ensuring robust processes and policies are implemented, kept up to date and followed • Ensuring the Commission are notified of any changes to the Constitution; • Financial reporting and monitoring • Good Internal and external controls • Mechanism for reviewing all new activities against Constitution, and contractual obligations • Operating within core activities as identified in the Constitution • Proactive communication and relationship management strategies with relevant groups • Staff responsibility for compliance clearly identified with appropriate resources allocated • Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request.

2.3.7 Loss of reputation

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Weakened financial viability and sustainability • Loss of mana • May lose affiliated providers/entities • May lose contracts, staff, board members • May lose professional & personal integrity 	<ul style="list-style-type: none"> • Audit & Risk Committee • Ensuring an annual return is submitted to the Commission within the appropriate timeframe • Ensuring officers remain qualified (as per the Act and the Constitution) throughout their period of service to the entity; • Ensuring robust processes and policies are implemented, kept up to date and followed • Ensuring the Commission are notified of any changes to the Constitution or officers; • External Audit • Financial reporting and monitoring • Financial viability assessment • Proactive communication and feedback mechanism with relevant groups • Skills/Competency appraisal for staff and board to ensure a sound mix is present • Use of Professional Advisors/External expertise eg media, legal, tax, human resources etc

2.3.8 Legal Action against Trustees/Directors

Potential Impact	Steps to Mitigate Risk
<ul style="list-style-type: none"> • Difficulty in securing other governance & staff • Financial consequences for individuals • Financial viability and sustainability • Loss of governance (board) & staff • Loss of mana 	<ul style="list-style-type: none"> • Educate all Governors / Officers on charitable purposes obligations • Ensure all organisation planning aligns with the Constitution • Ensuring an annual return is submitted to the Commission within the appropriate timeframe; and • Ensuring officers remain qualified (as per the Act and the entity's Constitution) throughout their period of service to the entity; • Ensuring robust governance processes and policies are implemented, kept up to date and followed Eg. board induction, meetings, conflicts of interest etc • Ensuring the Commission are notified of any changes to the rules, deed or constitution or officers; • Financial reporting and monitoring • Financial viability assessment • Insurance (Public Liability, Directors etc) • Use of Professional Advisors/External expertise eg media, legal, tax, human resources etc • Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request.

2.3.9 Specific Obligations under the Charities Act 2005:

Charities Act obligations	Strategies to ensure compliance with Charities Act obligations
Governors / Officers remain qualified (as per the Act and the entity's Constitution) throughout their period of service to the entity;	<ul style="list-style-type: none"> • Ensure robust governance policies, processes and practices eg. Conflicts of interest, Annual declaration of being qualified as outlined in the Act, Good-faith reporting (Whistle blowing) • Training for board members • Sound recruitment and induction processes for trustees
The Commission are notified of any changes to the rules, deed or constitution or officers (section 40 of the Act);	<ul style="list-style-type: none"> • An identified staff member is made responsible for compliance programs • The notification requirement is hardwired into processes and policies that specify what and how reviews and or changes to the Constitution may be made • The Constitution is reviewed regularly
An annual return is submitted to the Commission within the appropriate timeframe (sections 41 & 42 of the Act); and	<ul style="list-style-type: none"> • An identified staff member is made responsible for the submission of the annual return • The notification requirement is hardwired into processes and policies that specify compliance reporting requirements as well as the organisations calendar for the financial year. • The annual return is reviewed prior to due date by a member of management and other than the person that prepared the document
Where applicable telephone or internet collectors for the entity must disclose its charitable registration number on request (section 39 of the Act).	<ul style="list-style-type: none"> • Complaints policy and procedure • Robust fundraising policy and procedures that are well communicated to all personnel and readily accessible.

2.3.10 Risk Mitigations and Standards for Risk Management and Compliance

Risk Mitigations in this section were developed in the context of the following Standards:

- Australian/New Zealand Standard (AS/NZS) 4360:2004 Risk management;
- HB 436, Risk Management Guidelines—Companion to AS/NZS 4360:2004;
- Australian Standard (AS) 3806-2006 Compliance Programs;
- Proposed ISO 31000

According to AS 3806-2006 Compliance Programs an effective organisation-wide compliance program will result in an organisation being able to demonstrate its commitment to compliance with relevant laws, including legislative requirements, industry codes, organisational standards as well as standards of good corporate governance, ethics and community expectations.

It is reasonable to assume that an entity less likely to be at risk of non-compliance is one with clear governing and strategic documents, committed governance and personnel as well as robust policies, processes and practices. However these features are important not only in ensuring compliance but also in minimizing the impact should a breach occur. AS 3806-2006 Compliance Programs highlights this when it notes that the courts have considered an organisation's commitment to compliance when determining the appropriate penalty to be imposed for contraventions of relevant laws.

Further publicly available risk mitigation frameworks are included in the Bibliography and Information Sources Section for the benefit and use of pilot organisations.

Section Three
Risk & Audit
Report

Charitable Purposes and Tax Compliance Systems Programme

Section Three

Pilot feedback and Conclusions

- Pilot organisation feedback on own Risk Profile and on Risk Assessment Model
- Conclusion

Prepared by FOMANA CAPITAL LIMITED for Te Puni Kokiri



Section Three - Pilot Organisation feedback and Conclusion

3.1 Pilot organisation feedback on own Risk Profile and on Risk Assessment Model;

3.2 Conclusion and lessons for next phase.

3.1 Pilot Organisation Feedback

Feedback on the tool and the resulting profile for each organisation was gathered via scheduled telephone interviews and/or face to face interviews. All but two of the organisations were able to provide feedback within the timeframe required. Two organisations had experienced changes in their Managers between the time that the interview process and policy checklist were implemented. Most of the pilot participants spoken to said that their organisation had benefited from the Risk and Audit process and that their risk profile was not unexpected. The consolidated risk profile enabled them to easily determine where they were placed in the group and their individual organisational risk profile. The use of the traffic lights were seen as a positive means for conveying risk and references were made in terms of its ease of use, clarity and understandability.

Other commented about the process and suggested room for improvement in these areas:

- Closer timing between completion of the questionnaire and the policy checklist;
- More time to complete the policy checklist;
- Maintaining a clear link between charitable registration and the risk profile.

In addition it was felt by one participant that the size of the organisation (resource base) needed to be taken into consideration in determining the risk profile because though the nature of risk was the same across the groups, the extent of risk differed according to organisational size.

The preferred methods for delivery of training were identified by participants as:

- Customized to organisation needs;
- Targeted at two different levels being governance and management;
- Use of Case Studies in illustrating concepts; and
- Face to Face training.

As with the questionnaire, the feedback on this section of the project indicated an openness and willingness by participants to further improve systems and knowledge.

3.2 Conclusion and Lessons for next phase

Risk Profile Process

The risk profiling process highlighted that half of the pilot organisations (four of eight) were in the low risk range, whilst the other half were in the medium risk and high risk range.

Feedback on the profile from the entities indicated that their results were not a surprise and that they had benefited from the processes and the profile. The presentation of the profile was described as “easy to determine” where they were placed in the group and as an individual organisation. The use of the traffic lights were seen as a positive means for conveying risk and references were made in terms of its ease of use, clarity and understandability.

Other comments about the process in terms of room for improvements were the timing between the questionnaire and policy audit, the timeframe to complete the policy checklist and a need to make clear the link between maintaining charitable registration and the profile. More effort has been made to address the latter point in the Mitigations section.

The risk profile of the participating entities in relation to this section has identified the organisations most in need of support. As mentioned earlier those in the higher risk profile range tend to be small in size, have been in operation for less than five years and have very little in the way of paid employees. The number of Māori entities fitting this description needs to be measured but it is expected to be numerous, therein highlighting the importance of addressing the risk of non-compliance with the Charities Act for Māori entities, their asset base and future sustainability.

The emphasis on policies and processes needed as mitigations to address various risk factors is considerable. The policy audit aspect of the risk profiling process identified specific areas of support needed. Examples of publicly available policies are included in the References section as further resources that may assist mitigate risk.

Risk Mitigations

The Risk Mitigations section highlighted the following as key mitigations for assisting organisations to maintain registration:

- Ensuring clearly communicated and easily accessible policies and systems to minimize the risk of non-compliance;
- Providing information to beneficiaries on the Charities Act 2005; and
- Raising awareness and understanding of the impact of non-compliance with charitable purposes on the organisation, its staff, the board and beneficiaries; and
- Training of governors / officers, leaders, and staff of Māori charitable entities on their obligations in relation to the charitable purposes and maintenance of charitable status for tax compliance.

Lessons for next phase of the programme

Participant feedback indicated the preferred methods for delivery of training as:

- Customized to organisation needs;
- Targeted at two different levels being governance and management;
- Use of Case Studies in illustrating concepts; and
- Face to Face training.

Opportunities for pilot organisations to benefit from Risk and Audit Phase

There is an opportunity for the pilot organisations to build on the results of this report by communicating clearly to stakeholders (including beneficiaries) what it means to operate as a charitable entity. The fundamental starting point is that the governors / officers must know 'what and why' their organisation exists. In short, charitable entities exist for their charitable purposes.

Governors / Officers should as a minimum:

- Know exactly how to operate their organisation within the parameters of the Constitution, and in particular, the charitable purposes.
- Communicate the charitable purposes and requirements of the Constitution to their stakeholders in an unambiguous manner so as to set framework for engagement.
- Establish criteria, processes and controls so that stakeholders are absolutely clear on the reporting requirements and accountability obligations for any funds or distributions made to them by the organisation.
- Establish internal administration checks and accounting systems to ensure any application for funds complies with the Constitution and its charitable purposes.
- Use internal decision making tools to assist with decision making, including a 'charitable purpose' risk assessment of the application for funds and what specific mitigations will be required, including for example, reports and invoices.⁴

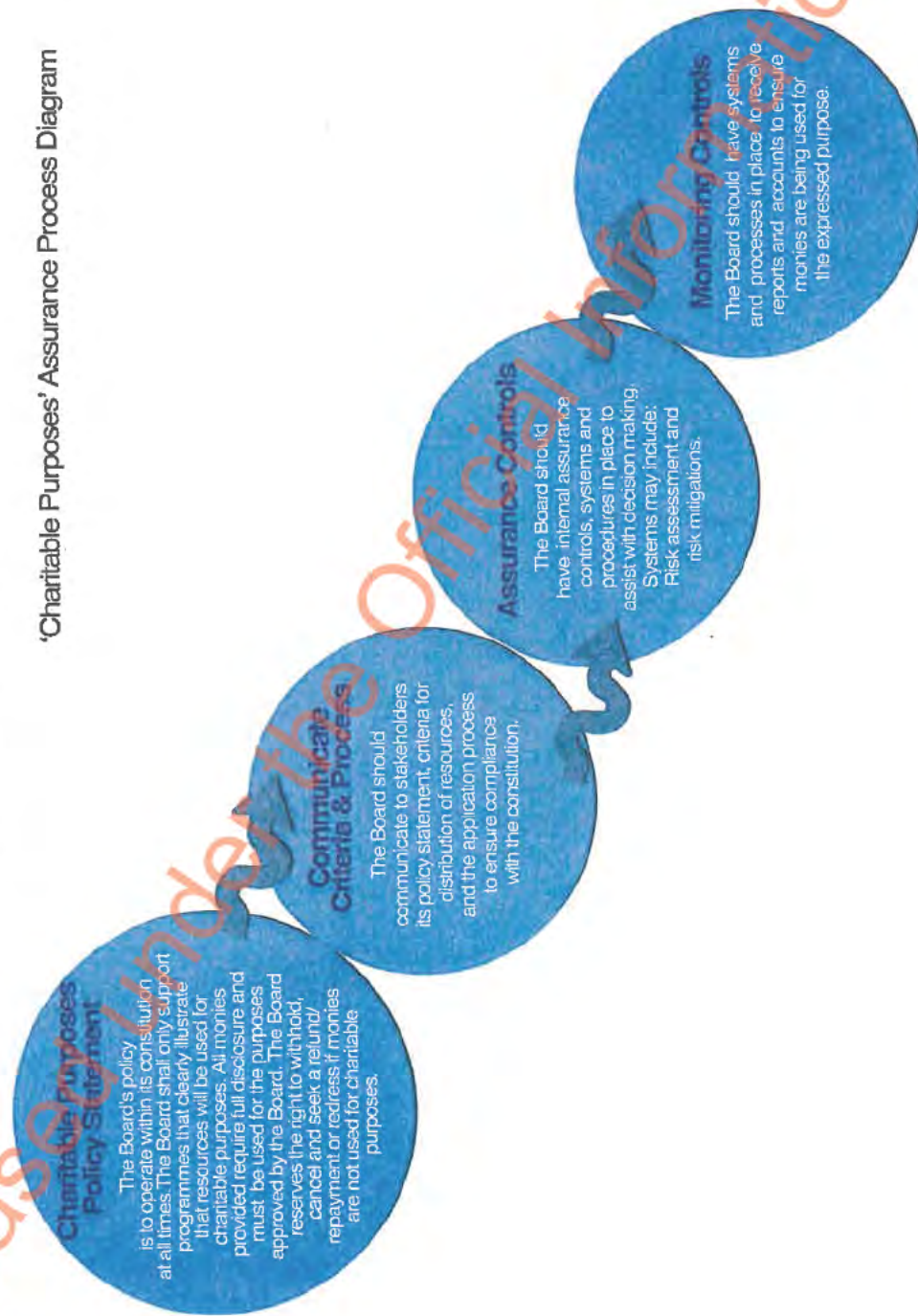
These 'assurance controls' will help the organisation to mitigate risk, and to maintain its tax exemption status. Diagram 2 on the following page illustrates this Assurance Process.

Resources for Pilot Entities

As with the previous reports, FOMANA has included for the benefit of readers of this report, the Policy List, and a Bibliography section with references and information sources relevant to the subject matter of this report.

⁴ Refer to Section Three of the Report for extensive list of Risk Mitigations.

Diagram 2: 'Charitable Purposes' Assurance Process Diagram



Appendices

Appendix 1: Policy Checklist for Māori Pilot Entities

Purpose

The purpose of this checklist is to identify a minimum set of policies needed in a Māori charitable organisation to assist meet its obligations under the charitable purposes and tax compliance framework and to align with:

- the Risk Management Standard AS/NZS 4360:2004 issued by Standards Australia/Standards New Zealand;
- the Risk Management Standard Guidelines Companion to AS/NZS 4360:2004 issued by Standards Australia/Standards New Zealand;
- Proposed ISO 31000 Standards
- the Compliance Programs Standard AS 3806-2006 issued by Standards Australia; and
- The US Panel for the Not for Profit Sector - Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations.

Format

The policy checklist is divided into the following sections:

- Section 1: Legal Compliance**
- Section 2: Governance**
- Section 3: Financial Management**
- Section 4: Information Management Systems**
- Section 5: Operations**
- Section 6: Personnel**

Section 1: Legal Compliance Policies

- 1.1 Code of Behaviour
- 1.2 Code of Conduct
- 1.3 Code of Ethics
- 1.4 Compliance with Legislation
- 1.5 Conflict of Interest
- 1.6 Delegated Authorities
- 1.7 Disaster Management, Evacuation & Recovery
- 1.8 Filing, Record Keeping & Archiving
- 1.9 Good-faith reporting
- 1.10 Health & Safety
- 1.11 Privacy & Confidential Information
- 1.12 Protection of Assets
- 1.13 Intellectual Property & Copyright
- 1.14 Public Relations
- 1.15 Smoke Free

Section 2: Governance Policies

- 2.1 Board Membership
- 2.2 Board Appointments and Induction
- 2.3 Board Committees
- 2.4 Board Education & Training
- 2.5 Board Performance Evaluation
- 2.6 CEO Performance Evaluation by the Board
- 2.7 Board Meetings and Record Keeping
- 2.8 Board Recruitment
- 2.9 Board Remuneration
- 2.10 Board Responsibilities
- 2.11 Reporting to the Board
- 2.12 Resignation/Removal From Board
- 2.13 Risk Management

Section 3: Financial Management Policies

3.1 Expenditure

- Accounts Payable
- Koha
- Other Payments
- Payroll
- Petty Cash
- Processing Payments
- Taxes

3.2 Accounts Receivable

- Bad Debt Write off
- Debt Collection
- Invoicing
- Receipt of Koha
- Receipting Funds

3.3 Annual Budget

3.4 Annual External Audit

3.5 Purchasing

3.6 Asset Acquisition & Disposal

3.7 Financial Infrastructure

- Accounting Software System
- Assets
- Bank Accounts
- Bank Relationship Management
- Current and Permanent Filing
- Delegation of Financial Authorities
- Employees
- Financial Contractual Agreements
- Internal Controls
- Record Keeping
- Suppliers

Section 3: Financial Management Policies continued

3.8 Financial Reporting

- Board Reports
- Shareholder Reports
- Management Reports
- End of Year Audited Reports

3.9 Investments

3.10 Distributions

3.11 Misapplication of Funds

3.12 Misappropriation of Funds

Section 4: Information Management Systems Policies

4.1 Information Technology Management

4.2 Classifying Information & Data

4.3 Computer And Internet Usage

4.4 Information Technology Access Control

4.5 Information Technology Hardware Security

4.6 Information Technology Outsourcing

4.7 Information Technology Records Management

Section 5: Operations

5.1 Communications

- Internal Communications
- External Communications
- Media

5.2 Customer Service

5.3 Document Management and Control

5.4 Drugs & Alcohol

5.5 Facility Management

5.6 House Rules

5.7 Motor Vehicle Use

5.8 Security

Section 6: Personnel

- 6.1 Information Technology Management
- 6.2 Classifying Information & Data
- 6.3 Computer And Internet Usage
- 6.4 Disciplinary Action
- 6.5 Employees Travel & Reimbursement
- 6.6 Equal Employment Opportunity
- 6.7 Harassment
- 6.8 Individual Employment Agreements
- 6.9 Leave & Absence
- 6.10 Leave Entitlement
- 6.11 Performance Management
- 6.12 Professional Development
- 6.13 Recruitment and Appointment
- 6.14 Remuneration
- 6.15 Supervision
- 6.16 Termination of Employment
- 6.17 Time In Lieu
- 6.18 Use of Employer Property
- 6.19 Volunteers

Appendix 2: Charities Commission Registration Update

<http://www.charities.govt.nz/>

How many charities have we registered?

As at 30 March 2009 we have registered 20,188 charities.

Registration processing times:

Our analysts have now finished reviewing all the properly-completed applications that we received before 1 July 2008. Most (more than 70%) have been registered, and are now on the Charities Register.

Some, though, raised issues that need the experienced eye of a senior analyst, to make absolutely sure that, like every registered charity, they have a charitable purpose and there is no possibility of private financial profit while the charity is operating, or if it is wound up.

We hope to finish processing all these applications by the end of the first quarter of this year - but, of course, the timing of that depends to some extent on how quickly applicants get back to us if we ask them for more information or clarification.

Applications received after 1 July 2008:

We've also received more than 3,000 applications since 1 July 2008 (and more are still arriving). Our analysts are working on these in a parallel process, and are reviewing them in the date-order we received them. They are currently processing applications received on or around 8 January.

Annual Returns

Registered charities must file an Annual Return with the Commission, within six months of their balance date.

Annual Return information helps the Commission monitor registered charities to ensure they continue to qualify for registration and provides information to the public about how charities carry out their charitable purpose.

Annual Returns and accompanying financial information are published on the [Charities Register](#).

View the [Annual Return info sheet](#) for more information about filing a return.

Registration and annual returns info - your opinions count

The Commission has published a series of information sheets in "plain language", to help organisations decide if they wish to apply to register, and to complete their application and Annual Returns. As well, we have also developed information about the Charities Act, and the thinking (and the law) that guides our decision-making.

If you have read our [information sheets](#), we'd appreciate your opinions about how we can make them better - please click [here](#) to complete our five minute survey.

Bibliography and Information Sources

Agency or Author	Title of Publication or Website	Date
Charities Commission	Useful Resources on: Legal Compliance and Financial Reporting. http://www.charities.govt.nz/guidance/financial_reporting.htm	Feb 2009
Panel on the Nonprofit Sector Report (US)	Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations www.nonprofitpanel.org/report/principles/Principles_Guide.pdf	October 2007
Family Services	Checklist of policies and procedures for not for profit organisations www.familyservices.govt.nz/documents/our-work/strong-families/family-start/setting-up/checklist-policies-procedures.doc	Feb 2009
Standards Australia/NZ	Australian/New Zealand Standard (AS/NZS) 4360:2004 Risk management HB 436, Risk Management Guidelines—Companion to AS/NZS 4360:2004 Australian Standard (AS) 3806-2006 Compliance Programs.	Jan 2009
Risk Mitigation Resources	Examples of Risks, Impacts and Mitigations for Charities http://www.charity-commission.gov.uk/Library/investigations/pdfs/AppendixIII.pdf Risk Management for Charities http://www.voluntaryarts.org/uploaded/map519.pdf Running the Risk http://www.voluntaryarts.org/uploaded/map519.pdf	March 2009

Agency or Author	Title of Publication or Website	Date
Policy Examples	<u>Legal Compliance</u>	March 2009
	<i>Compliance with legislation</i>	
	http://www.canterbury.ac.nz/ucpolicy/GetPolicy.aspx?file=legalcompliancepolicy.pdf .	
	<u>Governance</u>	
	<i>Board Remuneration</i>	
	http://www.goldminex.com.au/files/corporate_governance/gmx_board_remuneration_and_evaluation_policy_2008_10_17.pdf .	
	<u>Financial Management</u>	
	<i>Misappropriation of Funds</i>	
	http://www.finance.ed.ac.uk/FraudPolicy/fraudPolicy.pdf	
	<u>Operations</u>	
	<i>Security Policy</i>	
	http://policy.vuw.ac.nz/Amphora!-policy.vuw.ac.nz-POLICY-000000000725.pdf	
	<u>Personnel</u>	
	<i>Equal Employment Opportunity</i>	
	http://policy.vuw.ac.nz/Amphora!-policy.vuw.ac.nz-POLICY-000000000043.pdf	
Other	www.bizmanualz.com	Jan 2009

