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Lawyers 

# Charities Healthcheck

(and the questions you should ask)

A collaborative guide

Part 3/6

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# People

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*edited by Steven Moe*

**To go fast, go alone. To go far, go together.**

Thanks to every contributor of ideas listed here (alphabetically) - a truly collaborative effort to get input of so many ideas from so many, and I hope the start of many examples of coming together! Join us by sending your thoughts for future editions so it can always be improved and refined.

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# Cover Image: Braided River Reflection

Braided rivers in Aotearoa New Zealand are unique because they change often, moving along in the same general direction, but never ever staying exactly the same.

Trying to plan every aspect of your life means you'll miss out if you try to stay in one stream. A lot will come down simply to this: persistence, serendipity and the relationships you cultivate.

Then the magic ingredient to really see new opportunities, is that you have to be willing to also let directions shift, like a braided river, and go where the water of new opportunities are flowing.



*Image: The afternoon sun reflecting off the braided Rakaia River flowing out of Lake Coleridge, captured on a flight south to Queenstown.*

**Edited by Steven Moe**

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Additional thoughts? Send them to  
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# Introduction:

## Kia ora and welcome to this collaborative guide.

So what is a “collaborative guide”? I really just made that name up to represent that this only exists because so many have contributed to it.

I went out to ask for input on an initial draft of ideas and was overwhelmed by the response of so many who felt the same - that we want to ask the right questions to support charities and “for purpose” organisations to stay safe. Thanks to you all!

I’ve helped many hundreds of these groups and they consistently face the same issues. Those are refined down in this guide through a series of themes and then questions so that you can learn quickly what often only gets found out by trial and error.

Why not choose a theme and then ask just those questions at your next board meeting and consider the answers together? Even if you have run a charity for a long time, they will be good reflection points - we can all be constantly learning.

This Charities Healthcheck sets out the key legal risks that charities should know about, and could work to improve, to mitigate risks to Board members and the organisation.

This is not a textbook. It is not long. It is deliberately high level. It’s a guide - like when you are in another country and someone takes you on a tour of a local place, and you get more insight than if you walked around it on your own.

Hopefully this is also a project that evolves over time - and it will be updated each year based on feedback received.

The plan is to revise and reissue this next year, so we welcome comments ahead of 1 September 2024. So, if there are ideas you have to contribute, send them over to me and we can consider adding them - maybe different questions or expanded ones, other resources, different topic ideas.

Originally I called this 15 Key Issues Charities Face but now have split that into these parts of the guide so that you can focus on things by these themes:

- **Part 1: Overview**
- **Part 2: Governance**
- **Part 3: People**
- **Part 4: Assets**
- **Part 5: Policies**
- **Part 6: Faith Groups**

My role is to be a catalyst to solve your legal problems. With a team of lawyers focused on “for purpose” organisations and 80 staff across four offices, we are New Zealand’s leading law firm for charities, churches, companies and entrepreneurs who want to do things differently - with purpose and impact at your core.

This guide is just one example of supporting this area, so check out some others as well - these range from [Seeds Podcast](#) (350+ conversations), picture book [The Apple Tree](#), [the Reimagining Business book](#), the upcoming [Seeds Impact Conference](#) in October (just \$20 for a day with 27 change-making sessions) and guides like the [Charities in New Zealand: A Legal Handbook](#).



*Together, let's make things better.*

Ngā mihi,  
Steven Moe

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## Resources

The Seeds Impact Conference will be held on 5 October 2023, with 27 sessions held over four zoom rooms and only \$20 to attend - more info and you can sign up here:

<https://seedsconference.nz/>



# Part III: Charities

## Healthcheck: People

### 5. Employees & volunteers

#### Why is this important?

Our people are what make an organisation successful, so we need to look after them and have clear terms in place regarding how they contribute to advancing the purpose.

Questions to provoke discussion	Your notes
When were your employment agreements last reviewed? Is this happening on a regular basis, say yearly, at the performance review discussion?	
Do you have agreements for your volunteers? NDAs for volunteers? Do you get references for volunteers?	
Do you have a code of conduct or policy which outlines expectations of behaviour for staff, volunteers, elders/kaumātua?	
<b>Key resource:</b> <a href="#">Charities in New Zealand: A Legal Handbook</a>	
Are all HR processes and systems up to date and managed online?	
Are the employment agreements updated each time new legislation is enacted that affects your employees rather than wait until the annual review discussion?	
Does every employee have a current individual employment agreement (IEA) or contract that is up to date with current legislation? Do you hold a signed copy on file as required by law? Do you have an IEA review schedule in place?	
Are your IEAs consistent or have they been signed at various times over the past decades and now have inconsistent terms?	
Have all IEAs been checked by a lawyer before being signed?	

## 5. Employees & volunteers - Cont.

Questions to provoke discussion	Your notes
<p>Does every employee have an up-to-date job description that clearly reflects their current role and is signed off by the employee and either the Chair or a delegated internal person? Is this reviewed yearly at the performance review discussion?</p>	
<p>What about staff who also volunteer? Do you have something in place which clearly records that additional hours, over and above paid hours, are voluntary? And are you ensuring that is the reality?</p>	
<p>Who takes responsibility for managing holiday pay and leave provisions/obligations? How is this reported to the Board? Do you periodically check how your payroll software is calculating holiday pay entitlement?</p>	
<p>Do you check that staff are actually taking leave? It's very easy for part-time staff to not take leave, and build up a large leave balance.</p>	
<p>Are accurate payroll records being kept - hours worked, remuneration of each employee, deductions, annual leave, sick leave, bereavement leave? Are you checking records to ensure you know how many hours staff work, and that they aren't working more (or less) than they should?</p>	
<p>Are all HR Processes and systems up to date and managed online?</p>	
<p>Are volunteers really volunteers, and are you careful to ensure they are not in practice being compelled or rewarded? Even if they aren't being compelled, is what they are being asked to do reasonable?</p>	
<p>What role does police vetting play in hiring/ appointment? Are all employees and volunteers required to have police checks? How are these kept up to date (i.e. every two years)?</p>	

## 5. Employees & volunteers - Cont.

Questions to provoke discussion	Your notes
Some roles may be set up as fixed-term or contract because they are directly linked to grant funding. Consider this when relevant, especially contract rollover or transition to employment.	
Do all fixed-term agreements state why the fixed term is needed? Is that reason genuine, and clearly related to the term? Note: trialling an employee is not a genuine reason.	
Who do you seek legal expertise from in all matters, and particularly for employment matters? This should be someone independent from the Board.	

## 6. Taking care of your people

### Why is this important?

We should look after those who contribute to our organisations in a proactive way.

Questions to provoke discussion	Your notes
Do you go through an appraisal/performance review process with your employees? How frequently? Are the performance objectives clearly aligned with the organisation's purpose and strategic plan?	
Are volunteers and staff properly managed, supervised and supported, covered by appropriate insurance cover?	
Mental health and wellbeing - what are you doing to safeguard your staff and volunteers?	
<b>Key resource:</b> <a href="#">Employment New Zealand</a> guidance	
What feedback mechanisms are in place to measure staff engagement and act upon it?	
Does every employee have a professional development plan?	



## 6. Taking care of your people - Cont.

Questions to provoke discussion	Your notes
Senior management pastoral care - how do you ensure your senior leaders are getting the care they need? Burnout prevention, mental health warrant of fitness etc.	
Senior management remuneration - who determines senior leader remuneration and how?	
Do you have a process and support to address performance or conduct issues?	
When your staff work from home what is their environment like? What safety considerations are at play then?	
Consideration for volunteers or staff working with vulnerable customers (protections for both).	
Is your Board staying in touch with the culture of your organisation (positive and negative) and not just the transactional aspects of HR?	

## 7. Health & safety

### Why is this important?

This is not just a box ticking exercise - a culture of caring for our employees, volunteers and others will prevent injuries and deaths. Build a culture where this is important.

Questions to provoke discussion	Your notes
Is H&S being reported at Board level? The tone is set from the top.	
What measures are in place for identifying and managing risk?	
Do you have a health and safety plan in place for all activities and are your staff and volunteers trained?	
<b>Key resource:</b> <a href="#">WorkSafe reference guide</a>	

## 7. Health & safety - Cont.

Questions to provoke discussion	Your notes
Who would be considered a PCBU (person conducting a business or undertaking) and/or an H&S officer for your organisation?	
Are they aware of their health and safety obligations?	
Do you record H&S issues and incidents?	
What are your H&S liabilities?	
Are you confident with reporting of risk to the Board?	
Do you have an Emergency Health Plan or Business Continuance Plan in event of a natural disaster or pandemic?	
Do you have risk assessment and approved controls for events?	
For H&S, a best practice approach might be to have a section on risk, including a Risk Framework and then the associated responses.	
Does the charity have personal liability insurance? What is the amount?	
Is there incident grading and reporting?	

## 8. Human Rights Act

### Why is this important?

Complying with this legislation is not an optional extra - ensure your processes and policies will keep you safe.

Questions to provoke discussion	Your notes
Are you aware of what this Act says and its implications for what you do?	
How are you ensuring diversity and inclusion?	
Have you considered how your charity is contributing to human rights in your activities? For example, are your suppliers ethically sourced?	
<b>Key Resource:</b> <a href="#">Human Rights Commission guides</a>	
Do you have a policy on who can hire your venue? Does it comply with the Human Rights Act?	
Are you aware of modern slavery legislation and implications for charities and activities?	
Are your employment policies inclusive of disabilities, ethnicity and gender, LGBTQIA+, giving guidance for accommodation in recruitment, induction and orientation?	
How are you ensuring diversity and inclusion?	
Do you expect staff to believe, and behave, in accordance with the values or beliefs of your organisation?	
Does this include what they do outside of work? If so, do you state this clearly and transparently, and is that reasonable, given the nature of your organisation and their role? Have you thought (and taken advice) about the potential legal implications?	

## 9. Complaints

### Why is this important?

Being able to respond to complaints will set your organisation apart. Don't just think about current complaints, also think about historical ones.

Questions to provoke discussion	Your notes
What would you do if there was a complaint brought against the organisation / a member of staff / a volunteer / a board member?	
What established procedures are there for handling historical complaints? What is needed to preserve the reputation of the organisation?	
Could you be proactive in this area to uncover complaints before they are actually brought and seek to have a proactive resolution?	
<b>Key resource:</b> <a href="#">Charities Services guidance on complaints</a>	
What about complaints that are not just historical, how are they handled? What could we do better?	
Where would you seek legal advice from?	
What is your organisations policy regarding talking to complainants?	
Do you have a Whistle-blower Policy?	
Do you have a Disputes Resolution Policy? How about a clause or process in your founding document?	
How is the organisation addressing the desire by a member of the public to either find out exactly what we are holding on them OR if they want to make sure that they are completely removed from all records?	



## 10. Privacy

### Why is this important?

The Privacy Act sets out many principles which need to be followed which are aimed at protecting the data and information of individuals.

Questions to provoke discussion	Your notes
Do you have an up-to-date Privacy Policy? Review plan/schedule?	
What would you do if there was a privacy breach?	
Do you keep information longer than it is needed?	
<b>Key resource:</b> <a href="#">Privacy information article</a>	
How do you store personal information about your members and contacts? What about financial information?	
Do you have appropriate cybersecurity measures in place to protect personal information (see later on cybersecurity)?	
Do you collect more information than you need?	
Do you know how long you need to keep different types of information, by law?	
Who is the privacy contact person in your charity. Have you got a plan for privacy training both for themselves and staff?	
Consider the guidelines and requirements of the Privacy Act 2020.	
What would you do if there was a privacy breach?	
Do your staff and volunteers treat information about people (regardless of whether that information seems sensitive, or interesting) with care and respect? Do they understand that this information (in a sense) still “belongs” to the person it identifies, and must be cared for accordingly?	

## 10. Privacy - Cont.

Questions to provoke discussion	Your notes
<p>Does a privacy policy appear on your website? Does it clearly tell people why you collect information, and what you do with it? Is what you do consistent with what you say?</p>	
<p>Do you have a policy on the use of images, especially images of children, in your publications? Do you ask for consent before using those images (and do you have a record of that consent, such as a video recording the consent, or a signed form)?</p>	
<p>What is the policy for storage of charity information and documents? If stored on individual trustee's devices, what's the security required?</p>	

## Resources

Perhaps these Healthcheck Guides have got you excited for ensuring best practice and wanting more information!

If so, then check out these free resources as well:

### Written guides and resources

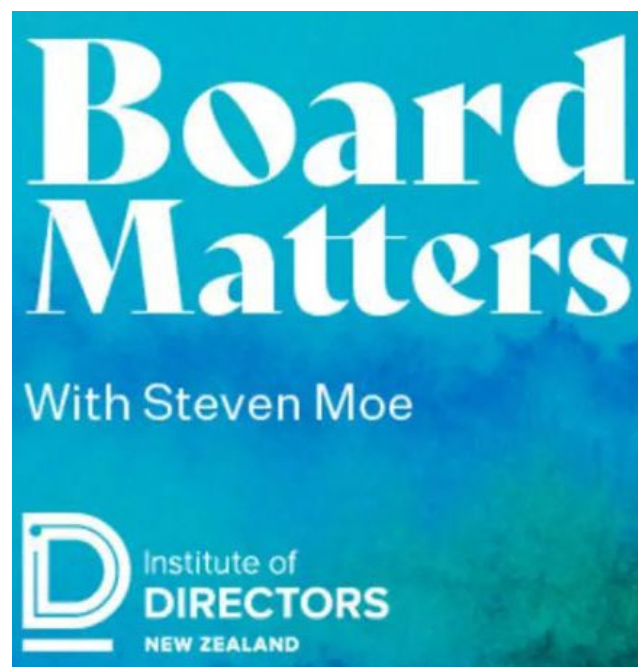
- [Charities in New Zealand: A Legal Handbook](#)
- [Governance Masterclass: 7 scenarios](#)
- [Governance essentials hub](#)
- [10 minutes on how to set up an impact driven organisation](#)
- [Social Enterprises in New Zealand: A Legal Handbook](#)
- [Health and Safety regarding volunteers](#)
- [Start-ups guide](#)
- [Governance podcast for IOD](#)
- [Impact Investing in NZ](#)
- [Reimagining Business Book](#)
- [Seeds podcast](#)
- [About privacy policies and what they should cover](#)
- [Capital Raising Guide](#)
- [Summary of two day IOD Leadership Conference](#)
- [Article on different types of roles: Volunteers, Employees, Contractors](#)
- [Trust control over other trusts article](#)
- [The Good Governance Code](#)

### Governance related videos

- [Chairing the Board](#)
- [Governance Masterclass - 7 scenarios](#)

### Other websites

- [Charities Services on types of tiers](#)
- [Charities Services guide for new board members](#)
- [NZ Navigator online charity assessment kit](#)
- [Community Governance Aotearoa](#)
- [IOD NFP site](#)
- [Community Networks Aotearoa: Tick for Governance course](#)
- [‘Better Banking’ report from CNA](#)
- [Christian Savings on long term maintenance plans](#)
- [Community Law Manual](#)
- [Questions on reputational risks](#)



*We hope this is helpful.*

*What else should we refer to in future editions?*