How to Review your Charity's Governance Procedures

Parry Field Lawyers

To the heart of what matters.

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Parry Field Lawyers are a leading law firm with around 100 staff across five offices. We provide practical, client-focused legal advice across charity, commercial, disputes, for-purpose, immigration, and property.

100 staff • 5 offices • Christchurch, Auckland & Hokitika

Agenda

01 Why this matters

02 Who is responsible?

03 Reviewing documents

04 Reviewing practices

05 How to do a review

Why this matters

Former charitable trust boss charged over alleged frauds worth $2.1 million

‘Lifelong fraudster’ who stole thousands from charity tried to blame innocent colleague

Board Statement on NZ Edutech Trust

Te Rātā Atawhai, the independent Charities Registration Board (the Board), has directed that NZ Edutech Trust (CC59481) (the Trust) be removed from the Charities Register under section 31 of the Act, effective 18 December 2024.

The grounds relied on by the Board are that the Trust significantly and persistently failed to meet its obligations under the Act by not meeting the annual reporting obligations set out in section 41 of the Act, and by failing to respond to a notice to provide information under section 51 of the Act.

Woman fleeces $823k from Waikato charity

Trustees defraud charitable trust of $500,000 to fund lavish lifestyle

'Sickened by the lies': Woman sentenced for stealing from charitable health trust

Linwood mosque hero removed as a trustee for 'negative behaviours'

Why this matters

New requirement introduced by the Charities Act by Charities Amendment Act 2023

- Obligation in place to review procedures every 3 years from 5 October 2023
  - The first deadline is now very close
- To encourage charities to practice good governance and continuous improvement
- To reduce the likelihood of poor practices leading to substandard outcomes
- To enhance the capability and reputation of this vital sector

Why this matters

42G Duty to review governance procedures

(1) A charitable entity must review its governance procedures (whether those are set out in its rules or elsewhere) at least every 3 years.

(2) When conducting a review under subsection (1), the charitable entity must consider whether its governance procedures—

(a) are fit for purpose; and

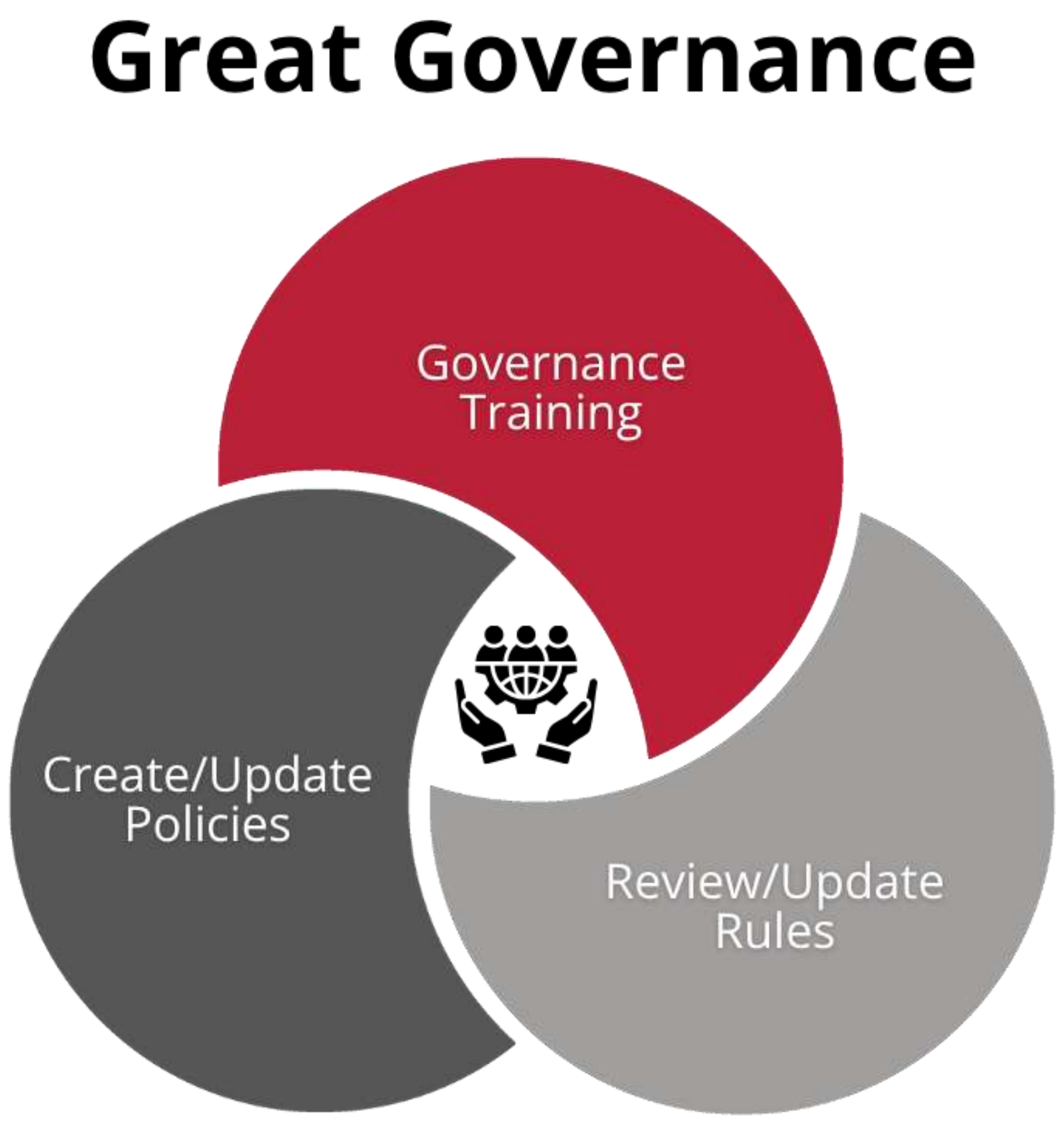
(b) assist the charitable entity to achieve its charitable purpose; and

(c) assist the charitable entity to comply with the requirements of this Act.

Section 42G: inserted, on 5 October 2023, by section 22 of the Charities Amendment Act 2023 (2023 No 34).

Governance procedures are documents and practices.

Why this matters



Who is responsible?

Directors

Charitable Company

Trustees

Charitable Trust

Officers (sometimes called Committee Members, Directors, Board Members)

Incorporated Society

The buck stops with the people in governance!

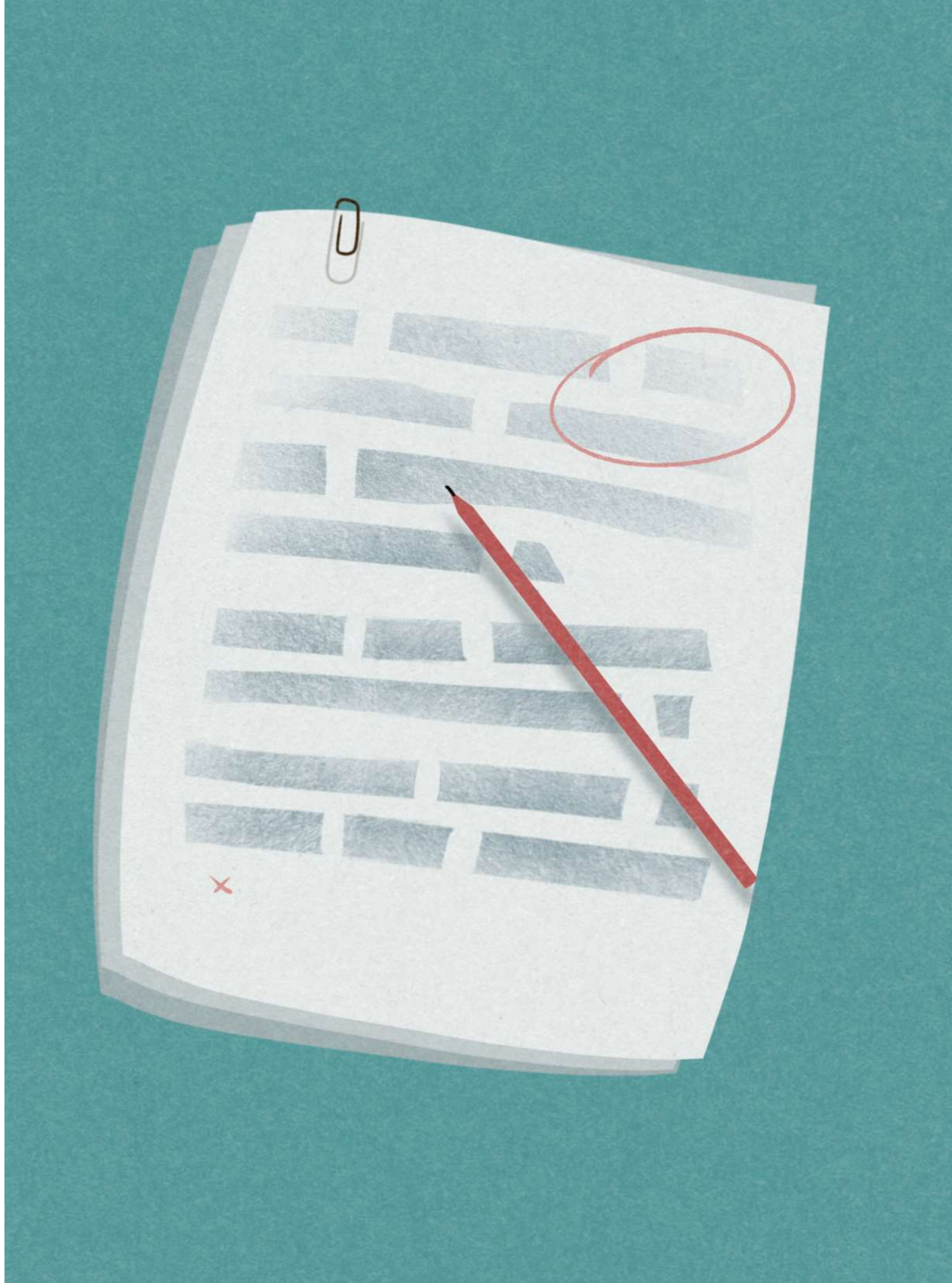
To the heart of what matters.

Reviewing documents

- Charities can be charitable trusts, incorporated societies or charitable companies, provided they have charitable status.
- Governance documents are firstly the main document that establishes and guides your entity, for example, the charitable trust deeds, constitutions or rules.
- Governance documents also include things like policies, bylaws, and charters

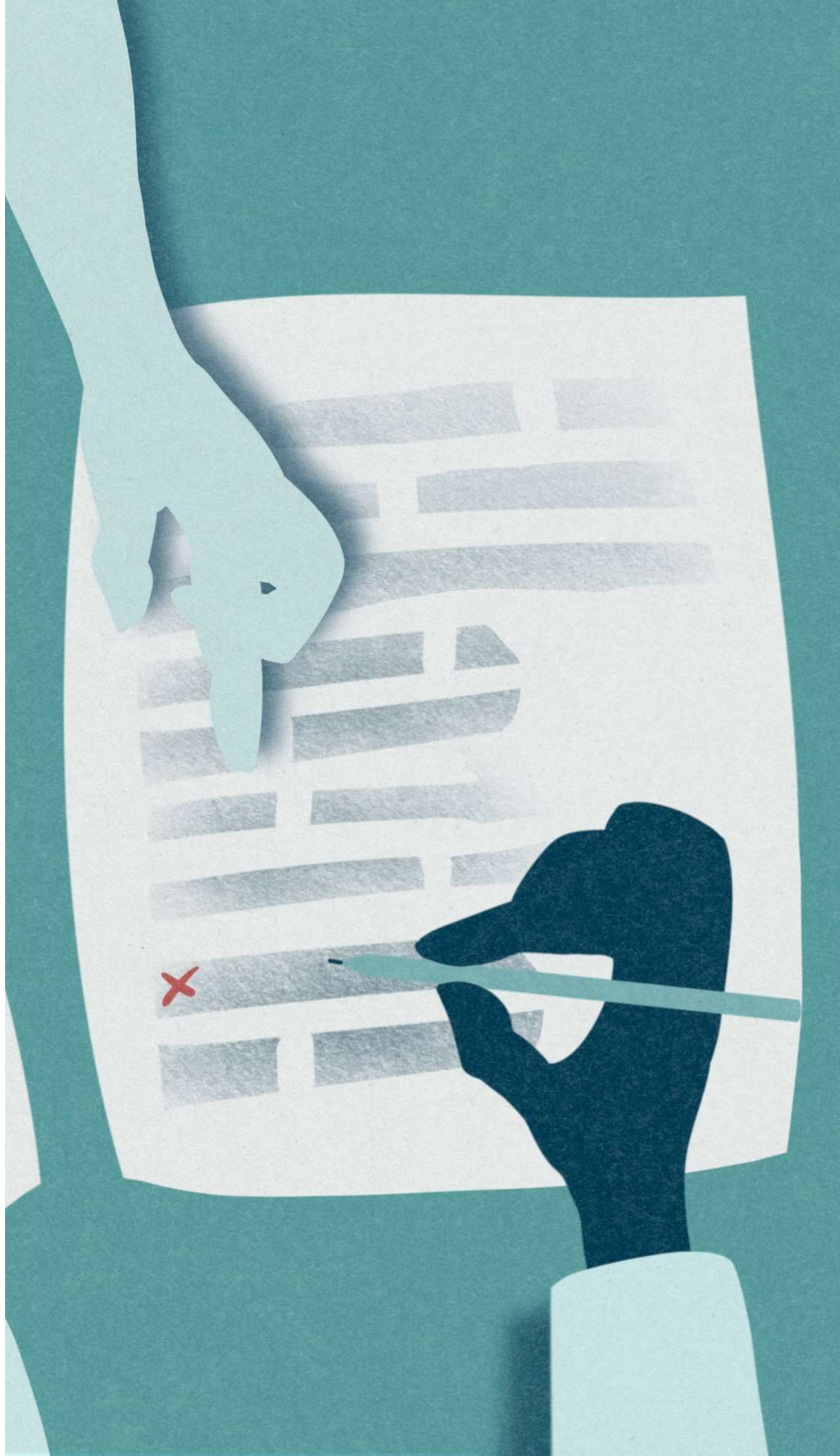
Reviewing documents - questions to consider

- When was the last time those in governance looked through their documents?
- Do governors know what the documents actually say and mean?
- Do they know what powers & restrictions they have?



Reviewing documents - questions to consider

- Do they follow the rules or follow what they think is right?
- Are the rules and policies compliant with current law or out of date?
- Are the documents complementary or are they inconsistent?
- Does the entity have the right types of documents for its circumstances?



What - documents - risks to be aware of

- Not knowing what an entity's documents say leaves entities vulnerable to breaching the rules and governor duties.
- Out of date documents leave governors vulnerable to breaking the law.
- Consequences can include bad publicity, complaints, loss of funders/funding, legal action, deregistration, and loss of a licence to operate.
- When a charity behaves badly, it can negatively affect how the public views other charities.

Reviewing documents - what to pay attention to

- **Charitable Purposes** – the heart of charitable entities, what the entity exists to do and the guide for key decisions.
- Use of funds and assets – must be in service of the purposes.
- No personal gain permitted.
- Powers and restrictions on powers.
- Conflicts of interest.
- Meetings – what process is set out; can meetings be online; quorum; voting thresholds; resolutions in lieu

Reviewing documents - updating your key document

Charitable trust deeds – the 'amendment clause' will include details of how to update the document. Take care to adhere to this clause.

Charitable company constitutions – will require shareholder approval.

Incorporated Society constitutions – refer to the 'amendment clause', noting membership approval will be needed.

Update Companies Office first and then **Charities Services**.

8. **POWER TO AMEND**

8.1 The Trustees for the time being may amend the powers and terms of this Deed as they see fit by unanimous resolution PROVIDED THAT the Trustees may not amend this Deed in any manner which would:

(a) Modify the intention of the Charitable Purposes set out in this Deed except to the extent required to register the Trust as a charitable trust under the Charities Act 2005 or any amendment or any statutory provision in substitution thereof; or

(b) Result in the Trust losing its status as a "charitable entity" under the Charities Act 2005 or any amendment or any statutory provision in substitution thereof.

11. **AMENDMENT OF CONSTITUTION**

11.1 The Society may amend this Constitution by a resolution passed by a two-third (2/3) majority of Members who are present in person and voting at a General Meeting, PROVIDED THAT no amendment of the Society's Constitution is made which would allow personal pecuniary profits to any individuals. The effect of this clause cannot be removed from this document and will be included and implied in any document replacing this document. All amendments to the Society's Constitution must be made in writing.

11.2 The Management Committee may amend the terms of this Constitution by a unanimous resolution of the Management Committee if the amendment:

(a) has no more than a minor effect; or

(b) corrects errors or makes similar technical alterations,

Reviewing documents - policies, bylaws, charters, etc.

Does the entity have policies fit for the work it does? Basic policies include: privacy; AI; health and safety; dispute management; financial management.

When were the documents last reviewed and updated?

Are they ‘living documents’ or do they sit in a drawer?

How does the entity ensure awareness and compliance?

Do the documents correspond with the rules or contradict them?

Are they legally sound?

Reviewing practices

This refers to how a charity carries out its work and is closely connected to its policies and procedures

How does it appoint new governors?

How does it induct those new to governance?

What does the entity expect in terms of behaviour and attitude?

What financial management is in place?

How effective and efficient are meetings?

How does the entity monitor risk?

There are plenty of helpful resources

There are excellent tools available free to support entities on this journey:

- Parry Field Lawyers Governance Hub
- Community Governance Aotearoa Resource Hub
- Charities Services guides
- Institute of Directors guidance
- CAANZ material

How to do a review - priorities

1. Review the entity's rules/constitution as a first priority. Make the changes necessary for the document to be 'fit for purpose'. Ensure all those in governance participate. Follow the rules!

2. Review supporting documents second. Ensure consistency and currency.

3. Review practices with a focus on governance meetings.

Are meetings focused on governance or management?

Does everyone participate actively or do some dominate and bully?

Are people well-prepared?

Are people asking the right questions or is there group think?

How to do a review - Our top tips

- Embrace the opportunity. The process sets entities up to succeed and avoid poor outcomes.
- Schedule tasks throughout the 3 years so the review is meaningful and manageable.
- Act on what is discovered. The aim is to keep improving.
- Get help. Seek expert advice when necessary.
- Use AI judiciously.

Contact us
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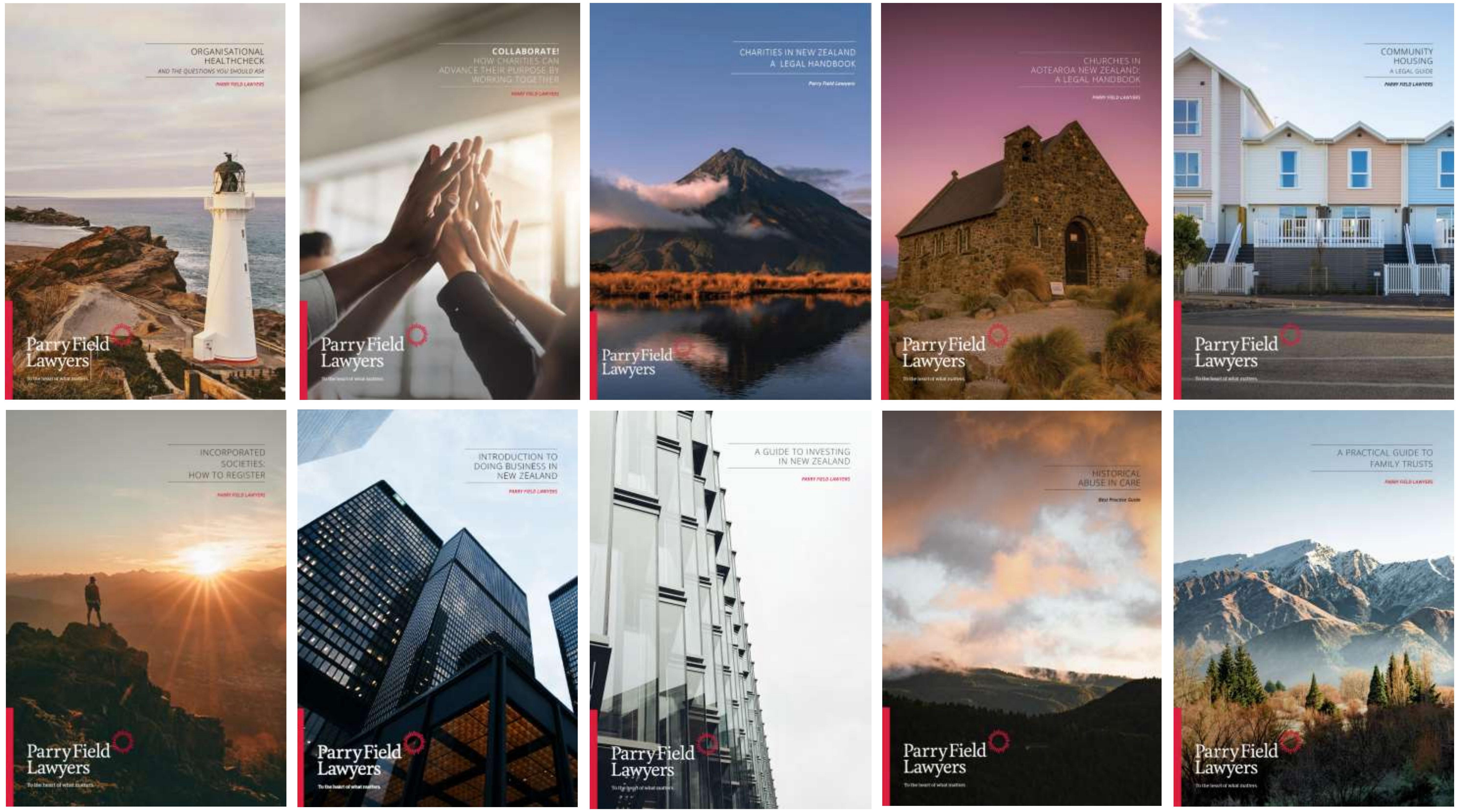
The Trust Equation

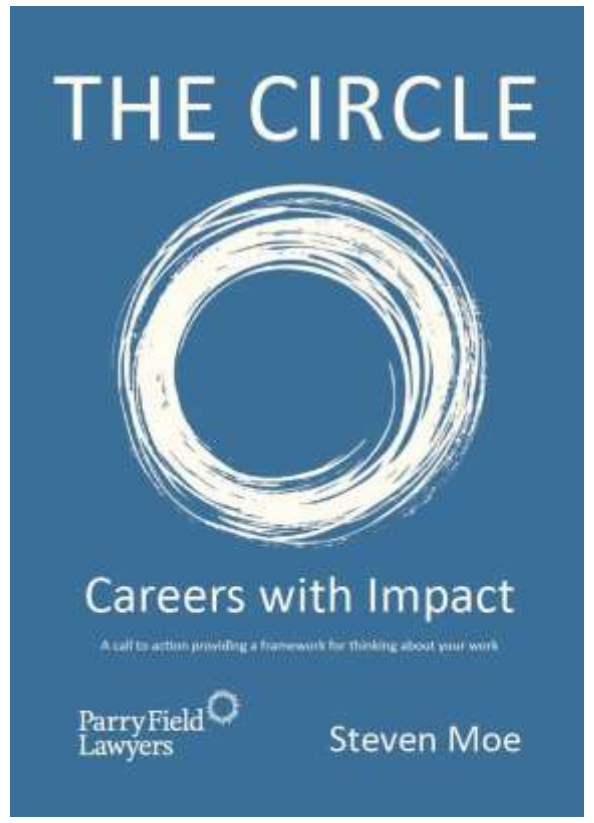
$$\text{TRUST} = \frac{\text{Capability} + \text{Reliability} + \text{Safety}}{\text{Self-Interest}}$$

Guides and Resources

Free guides and recourses available at **parryfield.com** include:



Scan to view more



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