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**Lester M. Salamon  
Director**

***Defining the Nonprofit Sector:  
New Zealand***

**Margaret Tennant  
Jackie Sanders  
Michael O'Brien  
Charlotte Castle**

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## *The CNP Project in New Zealand*

### **Committee for the Study of the New Zealand Non-Profit Sector:**

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Tuwahakairiora Williams, Independent Researcher, Non-Profit Sector

### **Ministry of Social Development:**

Diana Suggate, Project Manager, Office for the Community and Voluntary Sector

Chungui Qiao, Adviser, Centre for Social Research and Evaluation

### **Research team:**

Margaret Tennant, Massey University

Jackie Sanders, Massey University

Michael O'Brien, Massey University

Michael Belgrave, Massey University

Rachael Selby, Massey University

Tom Bennion, Bennion Law

Charlotte Castle, Bennion Law

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Center for Civil Society Studies  
Institute for Policy Studies  
The Johns Hopkins University  
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USA

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**Institute for Policy Studies**

Wyman Park Building / 3400 North Charles Street / Baltimore, MD 21218-2688  
410-516-7174 / FAX 410-516-7818 / E-mail: [ccss@jhu.edu](mailto:ccss@jhu.edu)

**Center for Civil Society Studies**

## **Preface**

This is one in a series of working papers produced under the Johns Hopkins Comparative Nonprofit Sector Project (CNP), a collaborative effort by scholars around the world to understand the scope, structure, financing, and role of the nonprofit sector using a common framework and approach. Begun in 1991 in 13 countries, the project continues to expand, currently encompassing more than 40 countries.

The working papers provide a vehicle for the initial dissemination of the CNP work to an international audience of scholars, practitioners, and policy analysts interested in the social and economic role played by nonprofit organizations in different countries, and in the comparative analysis of these important, but often neglected, institutions.

Working papers are intermediary products, and they are released in the interest of timely distribution of project results to stimulate scholarly discussion and inform policy debates. A full list of these papers is provided inside the back cover.

The production of these Working Papers owes much to the devoted efforts of our project staff. The present paper benefited greatly from the editorial work of Eileen Hairel, project coordinator, and Mimi Bilzor, communications associate. On behalf of the project's core staff, I also want to express our deep gratitude to our project colleagues around the world and to the many sponsors of the project listed at the end of this paper.

The views and opinions expressed in these papers are those of the authors and do not necessarily represent the views or opinions of the institutions with which they are affiliated, the Johns Hopkins University, its Institute for Policy Studies and Center for Civil Society Studies, or any of their officers or supporters, or the series' editors.

We are delighted to be able to make the early results of this project available in this form and welcome comments and inquiries either about this paper or the project as a whole.

Lester M. Salamon  
Project Director





# *Defining the Nonprofit Sector: New Zealand*

by  
Margaret Tennant  
Jackie Sanders  
Michael O'Brien<sup>1</sup>  
Charlotte Castle<sup>2</sup>

## **Introduction**

This paper is the first product of the work being carried out in New Zealand through the Johns Hopkins Comparative Nonprofit Sector Project (CNP). The New Zealand partners are the Committee for the Study of the Non-Profit Sector in collaboration with the Office for the Community and Voluntary Sector (within the New Zealand Ministry of Social Development). The CNP has been recognized as the first systematic effort to analyze the size, scope, structure, financing, and role of the nonprofit sector in a cross-section of countries around the world to improve understanding of this sector. The addition of *Aotearoa*<sup>3</sup>/New Zealand to the Johns Hopkins international comparative data set is a promising step for the study of the nonprofit sector in *Aotearoa*/New Zealand and in the world more generally. It will hopefully serve as a useful foundation for other steps expected in coming years in the world of research and action concerning nonprofits.

There is a strong tradition of individuals joining formal and informal organizations, volunteering, and giving in *Aotearoa*/New Zealand. The tradition of corporate and large philanthropic giving is less well established. In *Aotearoa*/New Zealand there is also a strong focus on the contribution that government is expected to make to associational life (ANGOA 2001, 1) and this includes contributions by government to nonprofit organizations.

There is no single agreed term that fully describes the nonprofit sector in *Aotearoa*/New Zealand. Rather, a number of terms are commonly used that refer to all or part of it. The application of these terms to organizations and to fields within the sector can overlap and sometimes terms are used interchangeably. In fact, there are debates around the use of all of the terms identified (Community and Voluntary Sector Working Party 2001, 202, 203; Robinson 1993). The most frequently used terms are nonprofit (or non-profit or not-for-profit), voluntary, community, voluntary welfare, nongovernmental, third sector (sometimes fourth), and independent sector. There can also be differences between the terms organizations use to refer to themselves, and those others use to refer to them. For instance,

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<sup>1</sup> Authors Tennant, Sanders, and O'Brien are faculty members at Massey University, New Zealand. Their team provided research and analysis for the Comparative Nonprofit Sector Project in New Zealand.

<sup>2</sup> Charlotte Castle is an associate of Bennion Law, which provided legal research services for this project.

<sup>3</sup> *Aotearoa* is the Maori name for New Zealand. It is used here in conjunction with the English name New Zealand. Maori are the indigenous people of *Aotearoa*/New Zealand.

the Ministry of Health uses the term NGO to refer to all health groups that are non-statutory and nonprofit making, but not all of these organizations will necessarily refer to themselves or the sector of which they are a part in this way, some preferring the terms community, voluntary, or nonprofit.

Further complications can arise because, while groups may be legally constituted as nonprofit making, they may not necessarily see themselves as part of the nonprofit sector. The diverse and varied organizations that take the nonprofit legal form cannot be easily described as a single sector with a common sense of purpose and shared values. Many organizations that would be defined as nonprofit organizations because of their legal status are more likely to identify themselves as belonging to that part of the social, cultural, sporting, economic, or political sector that they serve, such as professional associations, sport, recreation, arts or culture organizations, and political parties. The local literature on the nonprofit sector predominantly focuses on that part of the sector concerned with social/human services and activism/social change. The terms used to describe these organizations are often used interchangeably or bracketed together, indicating a strong overlap among them. NGO, nonprofit, community, voluntary, voluntary welfare—are all used in varying combinations, and in an overlapping way, to refer to groups active in the social, health, education, advocacy/change, and development areas.

The development of our understanding of a nonprofit sector, and the organizations that may be thought to constitute that sector, also needs to allow for clear recognition of the particular place of *Maori*<sup>4</sup> and Maori organizations within Aotearoa/New Zealand society, and the relationship between Maori and the Crown<sup>5</sup> (Community and Voluntary Sector Working Party 2001, 17). The place of the Treaty of Waitangi<sup>6</sup> in the development of Aotearoa/New Zealand is discussed in Part I. At this stage, it is important to note that the Treaty has a long and contested history in this country, and of particular importance to this discussion is the issue of *Tino Rangatiratanga*,<sup>7</sup> that is, the understanding that the Treaty, in its Maori version, provided for self-determination by Maori.

Concepts such as volunteering and helping others (see, for example, Kerr, Savelsberg, Sparrow, and Tedmanson 2001) may not translate neatly into a Maori context and the separation between ideas of family and community, which underpin Western understandings of philanthropy and community work, may similarly not easily translate for Maori people (Robinson and Williams 2001). Stretching back into the past and forward into the future are a rich array of organizational forms that serve to provide stewardship for the affairs of *iwi* (tribes) and these are an important part of the fabric of contemporary Aotearoa/New Zealand

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<sup>4</sup> As noted above, Maori are the indigenous people of Aotearoa/New Zealand. At the 2001 Population Census, 1 in 7 people (526,281) in New Zealand identified as being of Maori ethnicity.

<sup>5</sup> The Government.

<sup>6</sup> Aotearoa/New Zealand does not have a formal constitution, but the Treaty of Waitangi formed the basis for the contemporary settlement of Aotearoa/New Zealand. It defines a partnership between the indigenous people (Maori) and the British Crown.

<sup>7</sup> There are many different meanings for *Tino Rangatiratanga* and the concept itself is part of a rich and ongoing debate in Maori society. “The word ‘tino’ is an intensifier and the word ‘rangatiratanga’ broadly speaking relates to the exercise of ‘chieftainship’. Its closest English translation is self-determination. Such a concept embraces the spiritual link Maori have with *Papatuanuku* (Earthmother) and is part of the international drive by indigenous people for self-determination” (<http://aotearoa.wellington.net.nz>, Maori Independence Site. Accessed February 24, 2006). Hill (2004, 23) suggests that the term translates as “full autonomy”—although many also refer to it as “absolute sovereignty” or Maori independence. For more information on the Treaty of Waitangi, the English and Maori versions, its history, and place in New Zealand see the website, [www.treatyofwaitangi.govt.nz/treaty/](http://www.treatyofwaitangi.govt.nz/treaty/).



society. Therefore the notion of a “sector” and “sector organizations” may not fit with Maori experience. Pacific and other immigrant groups also share a strong commitment to the extended family, where “community service” is often seen as an extension of everyday family responsibilities as opposed to a separate nonprofit or voluntary activity.

Part I of this paper focuses on the history of the nonprofit sector in Aotearoa/New Zealand. To understand this sector in the present, it is important to understand its history. The first task is to identify the most important milestones defining periods of development of Aotearoa/New Zealand nonprofit organizations and then to describe how these periods and events have shaped the contours of the sector visible today. The second part of the paper focuses on the legal frameworks that govern nonprofit organizations. The third section describes the major types of nonprofit organizations using the United Nations International Classification of Nonprofit Organizations (ICNPO) as a framework. The fourth section discusses the structural-operational definition utilized more generally in the international CNP and its applicability to the Aotearoa/New Zealand context.

## **Part I. Historical Background**

A colonial past, the interface of “two peoples,” and separate cultural inheritances underpin the history of the nonprofit sector in Aotearoa/New Zealand. They continue to do so today. Loose associational forms have either become formal organizations over time, or have lost purchase in the public imagination, to be replaced by new concerns and commitments. Struggle and ephemerality are as much a part of the historical story as growth, specialization, and bureaucratization. Current inquiries seek to quantify and explain formations that are themselves constantly changing; the New Zealand component of the CNP is in itself part of an unfolding story.

The emergence of nonprofit organizations in Aotearoa/New Zealand has its roots in pre-colonial and colonial society. The proliferation of nonprofit organizations in Aotearoa/New Zealand coincided roughly with the end of the colonial period in the constitutional sense—the decades from the 1880s until the end of the First World War. From the late 1930s, the New Zealand welfare state expanded, resulting in the realignment of nonprofit activities. A third period of nonprofit sector development, from the 1970s to the 1990s included a major reconfiguration of the sector’s relationship with the state after 1984. With it came a rupture in the notion of “partnership” which had been increasingly elaborated between government and the nonprofit sector since the Second World War.

### **The Pre-Colonial and Colonial Period**

Because the European settlement of Aotearoa/New Zealand came relatively late in international terms, many of the organizations that are now conceived of as part of the nonprofit sector first appeared in recognizably modern form only in the later 18<sup>th</sup> century. Their origins are part of a British story, as is their legal underpinning.

The first Europeans, or *Pakeha*,<sup>8</sup> came to a Maori-dominated world from the late 18<sup>th</sup> century. Europeans first made contact with Aotearoa/New Zealand at a time when voluntary

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<sup>8</sup> The term “*Pakeha*” is commonly used in New Zealand to refer to a non-Maori New Zealander.

associations were “breaking out like measles over the face of Britain and the rest of Europe” —patriotic and charitable societies, clubs and lodges emerged in large numbers from the late 18<sup>th</sup> century (Colley 1992, 88). Early Pakeha migrants, largely of British stock, arrived well acquainted with such associations. Religious and secular precursors of nonprofit organizations were apparent even before annexation and the signing of the Treaty of Waitangi with Maori in 1840.

During this period, Maori had their own associational forms or “social engines.” These were based on extended family groups (*whanau*) or wider descent groups (*hapu*) usually characterized as sub-tribes, and *iwi* (tribes). Such collectivities were fluid and variable in size, and individuals could have more than one affiliation in terms of descent (Belich 1996, 83-4). A contrast has been drawn between the collectivism of Maori life and the aggressive assertion of individual rights, responsibilities, and private ownership in 19<sup>th</sup> century British society. Collectivist (and, centuries earlier, tribal) models were part of British experience, but had been marginalized by the time Britons began to migrate to New Zealand in significant numbers (Cheyne, O'Brien and Belgrave 2005, 141-142). Individualism, with its related understandings of freedom of choice, fed into “voluntarism” and, ultimately, into the current definitions of “nonprofit” organizations. Associational membership by birth, and notions of cultural obligation which were, and are, part of Maori tribal life, remain contested criteria for nonprofit status. In the past, *iwi*, *hapu*, and *whanau* would not have been seen as part of New Zealand's “voluntary” sector, and many such organizations do not easily fit within modern definitions and categorizations of nonprofit organizations.

Issues relating to descent status are now overlain by other historical forces. In particular, the relationship between Maori bodies and government is inextricable from interpretations of the principles of the Treaty of Waitangi, which are bound up with unresolved issues of sovereignty and governance (Community and Voluntary Sector Working Party 2001, 2, 55-57). The Treaty was signed by Maori chiefs and representatives of the British Crown at Waitangi and a number of other venues in 1840. The fact that the colonizers chose to sign such a treaty was in itself recognition of Maori political capacity, and of their relatively high standing in European racial hierarchies of the day. As a document, the Treaty was problematic from the start: Maori and English language versions were signed, neither an exact translation of the other. The English language version guaranteed Maori their lands, estates, forests, fisheries, and other properties, gave Maori the rights and privileges of British citizens, and ceded “sovereignty” to the Crown. In the Maori version *kawanatanga* (literally translated as “governorship”) was ceded to the Crown, and Maori were guaranteed their *rangatiratanga*. This translates most literally as “chieftainship” but has also been seen as guaranteeing “autonomy” or “self-determination.” Both versions of the Treaty have been cited over time, and there has been much debate about the understandings of those signing it. Historically, where settler governments acknowledged the Treaty, they tended to emphasize the English version and the ceding of sovereignty. Treaty scholars generally acknowledge today that the Maori version, with its guarantee of *rangatiratanga*, was more relevant to Maori, and that, at most, a sharing of power was anticipated (Hill 2004, 13-14). These are not just matters of constitutional nicety in the present, but inform the claims of Maori organizations for special status and standing in relation to the Crown.

Pakeha organizational forms were first represented by missionary societies in the Bay of Islands: the Anglican Church Missionary Society ministered to Maori from 1814, the Wesleyans from 1823, and the Roman Catholic Church from 1838. Such limited missionary toeholds were insufficient to minister to an expanding Pakeha community after 1840, and

worshipping communities depended at first upon lay leadership. As the churches expanded their formal presence over the 19<sup>th</sup> century there was generally a high level of religious tolerance (Jackson 1987, 34-37). This was remarked upon by outside observers, and it meant that religion did not provide a strong conflictual basis for the emergence of nonprofit organizations. A Catholic school system did emerge from the 1860s, and there was an element of competition in the establishment of church social services from the late 19<sup>th</sup> century, especially where children (the future adherents) were concerned.

More secular forerunners of nonprofit organizations can also be glimpsed prior to 1840. They largely aimed at the establishment of order and respectable codes of conduct. Temperance associations were formed among early settler groups in the Bay of Islands and Hokianga from 1836. In 1839, an attempt was made in Paihia to form the Victoria Paternal Association for the children of English fathers by Maori mothers. The Kororareka Association was formed in the country's first rough township in 1838. It sought to punish breaches of law and order, and has been seen as an attempt at settler self-rule (Owens 1992, 47; Belich 1996, 198).

After 1840, friendly societies, craft unions, and benevolent societies made an appearance in townships. Friendly societies, which operated on the margins of the commercial and nonprofit sectors, first appeared in New Plymouth and Nelson over 1841-2 (Carlyon 2001, 1-2). Pakeha migrants brought with them a determination to escape oppressive labor conditions, and the eight-hour working day was soon in their sights. This was a key objective of the colony's first recorded trade society, a Benevolent Society of Carpenters and Joiners formed in Wellington in 1842 (Roth 1973, 4). Cricket and horse-racing generated some of the first sports clubs in Canterbury in the early 1850s, their early emergence owing much to the patronage and landed wealth of the Canterbury province's elite (Ryan 2000, 328-329).

The first charitable association with any longevity was the Auckland Ladies' Benevolent Society, formed in 1857 to help destitute women and children. It was followed by benevolent societies in Dunedin in 1862, Christchurch in 1865, and Wellington in 1867. These bodies, like many of the sports clubs, had formalized structures, but other associational activities remained loosely organized. The scale of all such activities was limited by population numbers and dispersal, and by the sheer demands of survival in a "pioneering" setting. It has been argued that high levels of residential transience also limited the emergence of community groups before the end of the 19<sup>th</sup> century (Fairburn 1989, 184-5). However, this did not prevent a minority core of settled, "respectable" citizens from participating in an increasing range of religious, sporting, political, and cultural pursuits, and forming associations to ensure their continuance (Belich 1996, 416). In what was still basically a village society beyond the four main centers (Auckland, Christchurch, Dunedin, and Wellington), basic needs were often met by more informal, neighborly interactions and reciprocities without the on-going institutional arrangements more characteristic of nonprofit organizations.

Shipwreck, fire, flood, and interracial conflict generated emergency committees, but not necessarily on-going associations. A strong individualism and a belief in New Zealand as a "new society," free of entrenched poverty and the ills of the "old world" seems to have worked against the emergence of organized and well-funded charities (Tennant forthcoming).

In the 19<sup>th</sup> century, Maori remained a tribal people, their iwi arrangements being overlain by the later (and often very complex) Maori-specific legal structures identified in Part II of this paper. However, Maori also continued to show political capacity by developing new

institutions, which borrowed from settler political and organizational forms, while remaining distinctively Maori. These included such pan-tribal movements as the *Kingitanga* or King movement, formed in the late 1850s, *Paremata* Maori or the Maori Parliament, established in 1882, and the Young Maori Party, which grew out of the Te Aute College Students' Association, formed in 1892. These have been described as transitional institutions, providing "signposts from one world to another" (Durie 2005, 16), and, as such, they began to approach the current conception of a nonprofit organization. The first two, moreover, were formed as "parallel and equal authorities to the settler parliament," aiming for some degree of constitutional autonomy for Maori (Cheyne, O'Brien and Belgrave 2005, 29).

It may have been the early Maori women's organizations that most closely aligned with 19<sup>th</sup> century settler notions of a "voluntary" organization and current expectations of a "nonprofit" organization. There was a close overlap between the tribally based *Nga Komiti Wahine* (women's committees) which appeared in 1893 and the nationally organized Women's Christian Temperance Union (WCTU), which had branches in Maori communities. A merging of activities and leadership between the two enabled the women to meet their obligations, both to Maori communities and to the WCTU (Rei, McDonald and Te Awekōtuku 1993, 4-5). Maori organizations ever since have been obliged to look to two worlds, and this has raised issues of accountability, definition, and classification in the work on the nonprofit sector.

### **Autonomy and Independence**

The colonial period of Aotearoa/New Zealand's history formally ended with the granting of dominion status in 1907, though the country had had parliamentary institutions since 1854 and substantial self-government since 1856. Most of the British Governor's remaining powers had been whittled away long before 1907. Despite political independence, economic dependence on Britain actually increased as part of what James Belich calls a "recolonization" process (Belich 2001, 53), although some Maori suggest that for them, internal forms of "colonization" never ceased.

A number of factors came together in the late 19<sup>th</sup> century to ensure that voluntary organizations (the terminology of the time) became more numerous, more complex, and, in some cases, nationally-organized. Population—its size, distribution, and ethnic origins—shaped the range of possibilities. Nonprofit organizations need a population base to sustain membership, the means for individuals to interact, and common identities beyond the family as a motivating force. These conditions began to be met in Aotearoa/New Zealand during the last two decades of the 19<sup>th</sup> century. Government-assisted immigration in the 1870s helped boost the non-Maori population from 99,000 at the time of the 1861 census to nearly 490,000 in 1881, and 626,600 ten years later. Urban growth was marked, more than half the population was living in areas designated as urban by 1911. It was in the more concentrated towns and cities that a variety of formal organizations emerged; informality and spontaneity remained more a feature of rural life. Indicators of permanence and transience, such as street directories, suggest that individuals became more settled. At the same time improvements in transportation allowed for regional and even national associations, sporting competitions, political, and sectional identities to emerge (Watson 1996, 124-125). The expansion of road and rail networks was funded by the state, especially after major overseas borrowing in the 1870s. The main trunk railway was completed in the North Island in 1908 and the South Island in 1912, and road improvements were on-going. A shrinking of distance and a social

homogenizing took place after the 1870s (Belich 1996, 443). This led to new forms of collective identity beyond the family group and beyond the region.

Most Pakeha migrants were British or Irish by birth in the 1880s, more than half from England and Wales (King 2003, 175). Within this British homogeneity were regional variations, both in terms of the parts of Britain where migrants came from, and where they settled. Scottish, and to a lesser extent, Irish-born immigrants were over-represented in the settler population compared with their proportions in Great Britain. New Zealanders of Irish and of Scottish descent did form separate societies which referenced their distinctive origins—Caledonian and Hibernian societies, Burns and Gaelic societies, Catholic sports clubs—but these were less and less culturally exclusive. The sense of “otherness,” which has so often underpinned nonprofit organizations elsewhere, was largely directed to recreational and social ends among Pakeha in Aotearoa/New Zealand.

There was strong pressure for the minority of non-British descent and of non-European ethnicity to subsume differences and, for the most part, they complied. The small Chinese population attracted by the gold rushes kept a low profile, although they did generate missionary effort from within the Presbyterian Church in the Otago province. However, Maori were aware of their status as *Tangata Whenua* (people of the land), and showed more open resistance to homogenizing forces. Their separate movements were a response to loss of autonomy and dispossession of land.

The expansion of national organizations was marked from the 1880s. This was a time of economic recession, the end of the new colony's foundation era (Graham 1992, 139). Urban poverty became more apparent. Land was less readily available for purchase and settlement; it no longer provided an alternative to welfare or a shared landholder identity, actual or aspirational. Sectional interest groups proliferated, many seeking to influence government policy in their members' interests. Political parties, as opposed to floating and unstable political alliances, began to emerge from the 1890s. The Liberal Party, which won the 1890 election, was the first to develop a level of mass organization and parliamentary discipline, but even under the strong leadership of Richard Seddon, party allegiance could not be relied upon.

A “tide” of trade unionism saw the number of unions increase from 50 in 1888 to 200 in 1890, with a possible twenty-fold increase in membership (Roth 1973, 10). The Liberals' 1894 Industrial Conciliation and Arbitration Act also encouraged the formation of small unions, providing a protective structure through which they could negotiate wage increases without recourse to strikes. The union militancy that nonetheless followed in the early 20<sup>th</sup> century was driven both by internal dissatisfactions with wage increases and conditions, and a sense of international class solidarity. On the other side, the New Zealand Farmers' Union (later Federated Farmers) was formed in 1899, followed in 1902 by the Employers' Federation. Professional groups also formed associations, the New Zealand Branch of the British Medical Association (later New Zealand Medical Association) leading the way in 1887.

As colonial society matured, New Zealanders identified with others across the country in comparable economic, religious, and even gender positions. Women's groups coalesced around the issue of female suffrage from the 1880s, and under the leadership of the Women's Christian Temperance Union, they were successful in making New Zealand the first nation state to enfranchise its women in 1893. The link between temperance and the vote was

strong, with male temperance advocates also supporting female suffrage on the assumption that the “home” vote would be anti-liquor. Many later women’s groups were, like the WCTU, characterized by their promotion of domesticity and child care. The Plunket Society, formed in 1907 to promote infant welfare, was probably the most dominant in terms of female membership and influence. It became hugely influential, with some 90 percent of Pakeha babies under its supervision by the mid 20<sup>th</sup> century (Bryder 2003, 162).

Recreational life also became more organized. Historians of sport have seen the period after 1880 as one where casual sporting events became fixtures based upon team competition, levels of skill, club membership, rules, and a growing assertion of the amateur ethos against threats of professionalism (Ryan 2000, 346).

Sports, such as rugby and cricket, were also seen as a means of socializing the young, as were the coterie of youth organizations that expanded markedly from the 1900s. Young Men’s and Young Women’s Christian Associations were in existence from the 1850s and 1870s respectively, but the early 20<sup>th</sup> century saw the flourishing of uniformed youth groups with a military and imperial outlook—the Boy Scouts and Girl Guides, and on the religious side, Boys’ and Girls’ Brigades.

We cannot ignore the role of government in this first stage of nonprofit sector expansion. Aotearoa/New Zealand’s claim to be the “social laboratory of the world” was not based upon a reputation for voluntary endeavor. Colonial governments had proven themselves active in assisting immigration, providing employment on public works, and assisting land settlement. The tendency of immigrants to look to the state was noted early in the colonial period. Nonetheless, state activism was of a particular kind. The Liberal government of 1890-1912 provided cheap loans for new farmers, regulated factory conditions, established an arbitration system to help avert labor conflicts, and introduced a means-tested old-age pension (Belgrave 2004, 27). Much of this involved attempts to assist those best positioned to help themselves. On the welfare side, it distinguished heavily between the deserving and the undeserving, even introducing expectations of morality into the 1898 Old-Age Pensions Act. Overall, there was still space for voluntary effort within the welfare economy and within wider civil society.

As suggested earlier, charity suffered from the strong individualism of the early settler consciousness. Commentators lamented the lack of private philanthropic effort and the fact that money-making seemed to be placed above its charitable dissemination (Tennant 2004, 46). The churches’ social service role was at first limited by the struggle to attract congregations and pay off mortgages on property, but their moral concerns saw the emergence of rescue homes for “fallen” women from the 1870s, followed by an increasing number of church orphanages from the 1890s. City missions, begun with an evangelical focus in the late 19<sup>th</sup> century, later developed a very practical social service function (Tennant 1993).

The early benevolent societies were largely non-denominational, but often underpinned by religious belief. Invariably, they came to see the state as a potential benefactor, and soon sought, and received, subsidies from government. The larger amount of generalized charity, or “relief,” was distributed by hospital and charitable aid boards, New Zealand’s equivalent of the English Poor Law, funded through local and central taxes. In a deliberate attempt to boost voluntary effort, the 1885 Hospitals and Charitable Institutions Act provided a formal mechanism for government to subsidize charities that agreed to incorporate under the Act—giving the relationship between government and the voluntary welfare sector statutory

recognition. The effort failed as the so-called “separate institutions” mostly ended up absorbed into the public sector hospital and charitable aid boards (Tennant 1989, 34). It represented, however, a more general and very early trend for central government to sponsor, or to become financially and even administratively linked with, certain key players in the voluntary welfare sector.

### **The Period of the Welfare State**

Nonprofit organizations remained a vital part of life in Aotearoa/New Zealand over the 20<sup>th</sup> century, with depression and two world wars encouraging new formations, while at the same time testing the effectiveness of the old. The depression of the late 1920s and 1930s generated new recreational and support groups. More particularly, it showed the limitations of religious and voluntary social services in the face of large-scale unemployment and distress, and the churches were eventually among those calling for greater state intervention.

The expansion of the welfare state under the 1935 Labour government led to fears that voluntary charity would be superseded by state-funded initiatives, but these proved unfounded. Friendly societies were the most negatively affected by the expansion of monetary benefits and free state medical care under the 1938 Social Security Act (Carlyon, 2001, 249). Despite the new package of health services and assistance “from the cradle to the grave,” the voluntary sector, and the churches in particular, found that more generous monetary assistance and overall affluence did not eliminate relationship difficulties. While providing an increasingly important interface between clients and an expanding social welfare bureaucracy, they also claimed a niche in counseling and the personal social services. Nonprofit agencies were often seen as less threatening than government departments, and clients were referred between the two sectors for a mix of counseling and material aid (Tennant 1998; 2004). State-nonprofit interactions were more obvious in the social service sector than elsewhere, though the Labour government’s 1937 Physical Welfare and Recreation Act specifically mandated grants towards voluntary organizations promoting or controlling activities in the area of physical training, exercise, sport, and recreation (*Statutes New Zealand* 1937, No.14).

The early stages of World War II did not produce patriotic outpourings on the scale of World War I, and patriotic work was more clearly under government regulation than in the previous war (Tennant forthcoming). Existing organizations, such as the Women’s Institutes, added war work to their activities, and local patriotic committees packed thousands of individual parcels to be sent to men overseas, as they had before. Voluntary organizations such as the Red Cross, remained important, but for women, war work now included uniformed voluntary and paid work in the women’s auxiliary services and, increasingly, employment in industry and other areas where there were labor shortages. War encouraged a stronger international focus within the nonprofit sector, seeing the emergence of new aid organizations such as the New Zealand Council of Organizations for Relief Service Overseas (CORSO). Established in 1944, CORSO collaborated with government in meeting New Zealand’s United Nations relief commitments, also coordinating the work of voluntary agencies concerned with overseas aid (Gully 1966).

War assisted the existing trend towards state-nonprofit sector alliances. Rehabilitation was largely seen as a government concern, but the Disabled Servicemen’s Rehabilitation League (founded in 1930) was mandated to provide training and rehabilitation services to soldiers returning from World War II, with the Government providing premises and the bulk of its

funding (Moore and Tennant 1997, 20). It joined the growing number of national organizations, which were closely integrated with state social service provision, and which enjoyed on-going state funding. Among the most entrenched of these was the Plunket Society, which dominated infant welfare with the assistance of a 60 percent government subsidy on nurses' salaries and various other forms of support by 1950 (Bryder 2003, 142). Marriage guidance counseling, work with disabled persons, kindergartens,<sup>9</sup> and the rehabilitation of prisoners were areas in which the voluntary sector was increasingly active with state endorsement and financial support (Tennant 1998; 2004). From 1950, the National Government provided subsidies to religious and welfare organizations willing to provide residential care for the elderly, a deliberate attempt to reduce public sector involvement in this area.

The decades from the 1940s to the 1960s constituted the prime of the welfare state in New Zealand. They were years of relatively stable government under Labour, and then National Party rule, of full-employment and affluence. Ministers often retained their portfolios for some years, building up relationships with favored nonprofit organizations. A situation developed where some bodies gained, and retained, government financial support as a result of historical circumstance and ministerial preference, while others, equally deserving, did not (Tennant 2004, 51-2). The actual extent of government transfers to the nonprofit sector is impossible to gauge for this period, but a 1967 estimate of social service expenditure by central government indicated that nearly \$NZ4 million, or around 0.6 percent of the total, went in direct grants and subsidies to voluntary bodies (Oram 1967, 247-253). Though proportionately small, most of this was vitally important to the functioning of favored organizations, and it was supplemented by many informal supports from government agencies, such as free passes on government transport, space in government offices, publicity materials, access to departmental libraries and information systems, and the use of public servants' time.

From the late 1960s, social change and economic instability became dominant motifs shaping New Zealand life. When Britain entered the European Community in 1973, Aotearoa/New Zealand lost favored status for its exports. Oil price increases in the mid-1970s compounded economic difficulties and unemployment, virtually unknown in the 1950s, started to rise. The viability of the welfare state was questioned on moral, as well as, economic grounds—concerns about welfare dependency matched concerns about rising welfare costs and inflation. Fractures in the welfare state placed pressure on the nonprofit sector, as did a new emphasis on community care and deinstitutionalization (Elworthy 1986, 11). The sector found itself required to assume responsibility for activities that some thought should be the domain of government. Equally, there were areas of need and activity in which some thought the state should not be involved.

Increasingly, individuals started to assert their rights against the collective values underpinning the welfare state of the 1930s and 1940s (Belgrave 2004, 34). New identities and sub-identities generated new associational forms. Firmly embedded in local communities, these bodies also drew inspiration from broader social movements and overseas examples. One of the first was the Intellectually Handicapped Children's Parents Association (later IHC New Zealand). Formed in 1949, it anticipated a later wave of self-help and advocacy groups,

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<sup>9</sup> Kindergartens are local early childhood services provided on a neighborhood basis and funded by central government through regional umbrella associations. They are a part of a diverse range of early childhood educational services. Others include *kohanga reo* (Maori language nests), Pacific language nests, childcare centers, home-based daycare and playcenters.



and was highly critical of government policies of institutional care. By the 1970s the women's movement and the Maori sovereignty movement were particularly strong forces in the expansion of nonprofit organizations. The women's movement generated collectivist and activist groups, which challenged older, hierarchical ways of organizing. It also accelerated the existing trend towards married women's paid work and, as a consequence, a diminution of the traditional volunteer base.

Maori urbanization proceeded rapidly after World War II, with some 75 percent of Maori residents in urban areas by the 1970s (compared to just over 11 percent in 1936). Over the 20<sup>th</sup> century, Maori participated in wider organizations, such as the Country Women's Institutes and the mainstream churches, increasingly claiming a distinctive voice on the basis of their "Maoriness." However, separate Maori organizations following Pakeha forms also increased in number over the 20<sup>th</sup> century, the most notable being the pan-tribal Maori Women's Welfare League, formed in 1951. Heavily promoted by the Department of Maori Affairs and its welfare officers, the League was another example of state sponsorship and support to the sector, though with a somewhat paternalistic face in this instance. The more male-dominated New Zealand Maori Council was formed in 1962, also with state endorsement and, in this case, a legislative mandate.

In the 1970s a new generation of educated young Maori radicals formed such protest groups as Nga Tamatoa. The new wave of Maori organizations coalesced around the issue of land rights, but rangatiratanga proved an especially potent rallying cry, usually targeted at government. The Treaty of Waitangi was a constant reference point, one which governments were ultimately unable to ignore. In the 1980s biculturalism became an official part of government policy and an acknowledgement of biculturalism and "Treaty principles" an expectation of bodies interacting with government.

Overall, the ascendancy of the welfare state saw the active sponsorship of some struggling social service organizations by government departments, helping them to form national federations and backing them, financially and ideologically, in their attempts to take "unorthodox" approaches to problems. Such arrangements were often predicated on interpersonal relations between politicians and nonprofit entrepreneurs—New Zealand's small size helped shape the posture of government towards the nonprofit sector and gave it an ad hoc, pragmatic, and sometimes very intimate character. Organizations were also endorsed because they could implement controversial or experimental policies, but at a distance from government (Tennant 2004). These comfortable, though somewhat exclusive, arrangements were more characteristic of the social services than of other parts of the nonprofit sector. The unions, for example, had periods of active conflict with government, as well as periods of influence (mostly under Labour governments), while sporting bodies maintained greater independence overall. However, from the 1970s, new social formations combined with economic decline to challenge established patterns.

### **Recent Developments and Future Prospects**

Diversification, dynamism, and increasing capacity and willingness to use a collective voice to raise issues in the public domain characterize the nonprofit sector from the late 20<sup>th</sup> century to the present. A number of factors combined to facilitate the advancement and expansion of the sector during this time. Aotearoa/New Zealand became more ethnically diverse, first from the Pacific Islands, and then, in the 1980s, from accelerating Asian migration. Pacific Island groups were initially strongly church-based, but more recent associations have tended to

reach beyond church connections, some promoting a pan-Pacific identity. Asian nonprofit organizations remain limited in number and coverage but are likely to grow and develop. The increasing cultural diversity of the country has been acknowledged by government through the creation of an Office and a Minister for Ethnic Affairs. Many communities have specific nonprofit organizations that serve their particular needs, for instance the Wellington Indian Association; and ethnic communities have also created umbrella organizations, such as the New Zealand Federation of Ethnic Councils, to represent collective interests.

In recent decades, as was happening internationally, the nonprofit sector in Aotearoa/New Zealand became much more diverse, and environmental, disability, gay rights, human rights, peace, consumer, self-help, arts, and sporting groups have all grown in number and strength. Whereas youth groups had been important in the early part of the 20<sup>th</sup> century and after World War II, the elderly emerged in the 1980s as a significant lobby group with their own organizations, such as Grey Power and Age Concern. The mainstream churches were experiencing dwindling congregations, but still claimed a voice on many matters of public conscience, and maintained some highly significant social services. A division also appeared between small, community-based organizations, and those nationally (and often bureaucratically) organized, with an existing claim on government resources and often with close connections to government. From the 1960s a number of small political parties began to challenge the hegemony of the Labour and National parties, but their electoral success was limited by the existence of a “first-past-the-post” voting system which gave power to the party with the single largest number of seats in the country’s unicameral parliament. The introduction of a mixed member proportional system of voting in the 1996 election markedly increased the parliamentary influence of these smaller parties.

Historically, the sport and recreation sector remained at arm’s length from government. Various governments had long encouraged participation in sport, linking it with public order, health and fitness, national identity, and citizenship (Collins and Downey 2000, 208). Larger sports proved suspicious of government attempts to establish national sporting councils, fearing interference. The issue of sporting contacts with the pro-apartheid regime in South Africa fueled mistrust in the 1960s and 1970s, some sporting groups vehemently taking the line that “sport and politics should not mix.” There was equal vehemence on the other side, and the Halt All Racist Tours organization was just one body pressuring government to ban sporting visits to and from South Africa. The issue led to major civil conflict with organized protests against the Springbok rugby tour to New Zealand in 1981, and the formation of new associations on each side of the divide.

The Council for Recreation and Sport and a Ministry of Recreation and Sport were established in 1973 to plan and support national strategies for recreation and sport. Their influence over sector organizations was at first limited, as little government funding was available for distribution. In 1987 the Hillary Commission was established as a Crown entity funded by government and the state-run lottery.<sup>10</sup> As funders, the Commission and its successor, Sport and Recreation New Zealand (SPARC), have exerted a significant level of

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<sup>10</sup> Crown entities are legally separate from the Crown, and usually governed by boards. There are three forms of entities: Crown agents, which must give effect to government policy when directed by the responsible Minister; Autonomous Crown entities, which must have regard to government policy when directed by the responsible Minister; and Independent Crown entities, which cannot be directed on government policy, or regarding statutorily independent functions, or to bring about specific results unless allowed under an Act other than the Crown Entities Act. SPARC is an Autonomous Crown Entity. (<http://www.ssc.govt.nz/Glossary/> Accessed 7 July 2006)

state influence over sport and recreation. While sport-governing bodies retain control over their codes, national strategies for the sector have shaped their priorities. (The same is true for the arts, which have been similarly influenced by the government's arts crown entity, Creative New Zealand.) SPARC remains as the government funder of sport and recreation, distributing funds from annual parliamentary allocations and profits from the state-controlled lottery. It operates in a context where sporting bodies are increasingly corporatized, even though sport and recreation retain substantial levels of nonprofit activity involving large numbers of New Zealanders. The distinction between a large amateur base and professional sport is sharper than ever before (Shaw 2006).

The nonprofit sector as a whole drew increasingly upon government funding, either directly or through funding streams overseen by government, such as the state-controlled lotteries system, state-regulated gaming machine proceeds, and statutory community trusts. There were precedents for such transfers that reached well into the 19<sup>th</sup> century, but from the 1970s the scale of government financial support went well beyond past expectations and practice. Social service activities still dominated. In 1986 a very conservative estimate put government funding for the voluntary welfare sector at \$NZ75.4 million. Most of this was in the form of direct grants and subsidies to aid the delivery of services in areas of need identified by the agencies concerned, and 68 percent of it was preallocated; that is, rolled over as a government budget item from year to year (Driver and Robinson 1986, 10).

By 2002, transfers from central government to nonprofit organizations more generally (including, as well as health and welfare, those in the areas of sport and recreation, art and culture, religion, the environment, and employment and economic development) were estimated at \$NZ920.6 million. A further \$NZ91.3 million came from the Lottery Grants Board (Robinson and Hanley 2002, 10). Funding for the sector currently comes, not only from purchase of services, but also from a range of small special schemes, such as the Community Organization Grants Schemes and the Community Initiative Fund. Many of these smaller schemes are significant for their encouragement of new initiatives, or for promoting employment in the nonprofit sector. Robinson and Hanley (2002, 35-36) estimated<sup>11</sup> that in addition to central government and lottery grants funding noted above, which represent 31 and 3 percent respectively of total nonprofit income, other sources of income for the nonprofit sector include:

- local government (\$NZ28.2 million—1 percent)
- gaming machine trusts (\$NZ131.2 million—4 percent)
- other philanthropic & community trusts (\$NZ142.8 million—5 percent)
- personal donations (\$NZ281.9 million—10 percent)
- bequests (\$NZ37.7 million—1 percent)
- corporate giving (\$NZ80.0 million—3 percent)
- payments and fees for service (\$NZ1,250.0 million—42 percent).

Since 2002, non-government funding sources have increased significantly. For instance, in 2005, funding from gaming machine trusts had increased to \$382 million.<sup>12</sup>

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<sup>11</sup> Caution is especially required with the estimates for corporate giving and for payments and fees for service, as these are based on international comparisons, rather than specific information from Aotearoa/New Zealand.

<sup>12</sup> Sourced from Department of Internal Affairs, Gambling Expenditure Statistics 1981-2005.

The dramatic reshaping of the state from the 1980s forward contributed to significant changes in the nature of the nonprofit sector and its relationship with the state. By this time, public sector changes were underway; delivering outcomes that amounted to a “revolution” in social and economic policies. New Zealand reprised its late 19<sup>th</sup> century role as the “social laboratory of the world,” but in reverse, as the state withdrew from many activities (James Belich refers to the country’s “strange (and enduring) pride in being the world’s white rat” (2000, 46)). A trend apparent in many other Western countries was taken further, earlier. The country’s small size, limited constitutional checks on the executive, and a first-past-the-post electoral system, enabled a radical reshaping of the economy and the attempted “winding back” and diversification of the welfare state.

Policies supporting community care, devolution, and the culturally appropriate delivery of services assumed the nonprofit sector’s ability to replace government activities or responsibilities, albeit with public funding. As a market-driven ethos began to shape the relationship between government and the nonprofit sector, purchase of services through contracts became the preferred mechanism for transferring resources from the state to nonprofit organizations. This had a major impact on the nature and focus of nonprofit activity. The shift from largely untied grants to contracts signaled a fundamental change in the way in which nonprofit organizations engaged in their activities. Contracts pushed organizations into the delivery of services and activities identified by the state, instead of determining their own priorities. A number of studies began to examine critically the nature of this support from the 1980s, concluding, in the words of one such review that “‘cost saving’ has often replaced ‘cost-effectiveness’ in the government’s relationship with the voluntary sector and this has been counter-productive...” (Driver and Robinson 1986, 55). In the sporting arena, commentators are beginning to analyze the impact of the contracting and managerial models, some worrying that these new mechanisms focus attention on the development of elite sport, where the national interest may be seen to be most efficiently pursued, at the expense of local, low key sporting activity within communities and the development of well-rounded sporting codes (Shaw 2006).

The use of contracts led to increased compliance costs, increased inter-agency competition for resources, and, for many nonprofits, greater insecurity of funding. A much higher level of professionalism and accountability was demanded from the sector. The managerial ethos permeated long-established charitable and voluntary cultures, causing many to lose the distinctiveness, which had informed their operations for decades, and sometimes undermining the volunteer base. At the same time, the state sector reforms of the 1980s and 1990s altered the culture of government and saw the loss of public servants with institutional and local community knowledge (Community and Voluntary Sector Working Party 2001, 47). The contracting model resulted in growing mistrust and a sense of power imbalance between the state and the sector. However, the new arrangements also opened up opportunities for some newer organizations, including Maori providers and those providing services to other cultural groups.

With the new Labour government elected in 1999 came some loosening of funding arrangements and a greater recognition of the sector’s value - rhetorically, but also in terms of such new government structures as the Office for the Community and Voluntary Sector (OCVS) and the appointment of a Minister for the Community and Voluntary Sector in 2000. The OCVS was established within the Ministry for Social Development in 2003, its mission to work across government with the aim of creating strong and respectful relationships between government and the community and voluntary sector (Office for the Community and

Voluntary Sector 2005, 37). Statistics New Zealand was also charged with the development of a satellite account to measure the value of the sector to the economy, suggesting recognition of the significance and role of the sector.<sup>13</sup>

Political statements since 2000 have suggested a softening in the discourse around state-sector relationships testifying, for example, to the value of the sector and of “social capital” more generally. In 2001, the Labour Government issued a “Statement of Government Intentions for an Improved Government-Community Sector Relationship.” This indicated that changes could be expected in the culture of government to one of respect for the “values, governance arrangements, and working realities” of the community, voluntary and iwi/Maori organizations with which public servants interact. The statement promised “a future where the state performs its role as a facilitator of a strong civil society based on respectful relationships between government and community, voluntary, and iwi/Maori organizations.”<sup>14</sup> Statements about cooperation, mutual respect, recognition of cultural diversity, public accountability and “appropriately flexible good practice” face the challenge of implementation in publicly and politically acceptable ways. Review and renegotiation are ongoing, as is the evolution of the sector itself. A tension is still seen to exist between issues of trust and issues of accountability where taxpayer revenues are involved and where there are different approaches to addressing issues citizens face.

The 1980s and 1990s have been characterized as a period of pain and soul searching for the sector as it worked to shape its relationship with the state as a key funder, and to still retain its sense of purpose as distinct from the state. Intense reflection on this relationship continues in the new millennium, along with concerns about the capacity of the sector to maintain an independent stance. Some nonprofits have elected to return to their roots, eschewing state funding and settling for less capacity, but an enhanced ability to set their own agenda. Others, some of the larger church and religious-based organizations for instance, have refocused their efforts, selling facilities and services to private providers and then utilizing the capital released to self-fund their own activities; again allowing themselves to reassert a degree of independence from the state. Yet others have developed services in line with the new environment, drawing extensively on state funding. There are also signs of awareness in the business sector of the role it can play in supporting new initiatives and existing services. The Robin Hood Foundation is one such example of an initiative that brings together business resources with nonprofit activities.<sup>15</sup> However, it is believed that overall corporate financing of nonprofit organizations remains small—international estimates suggest around 3 percent—and generally interaction between business and nonprofit organizations is limited, while government funding, suggested to be approximately 35 percent, represents a significant proportion of overall nonprofit income (Robinson and Hanley 2002). Most nonprofit organizations are likely to be small, informal, receive no government funding, and employ no paid staff.<sup>16</sup> For all this, the state is likely to remain a significant funder of nonprofit sector

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<sup>13</sup> Participation in this project is one result of this new approach. Statistics New Zealand and the Ministry of Social Development are working collaboratively, with extensive consultation from within the sector to examine the size, structure, role, financing, and impact of the nonprofit sector in Aotearoa/New Zealand.

<sup>14</sup> For further information concerning the statement of government intentions see the website: <http://www.ocvs.govt.nz/about/government-intentions.html>

<sup>15</sup> For further information on the Robin Hood Foundation see its website: <http://www.robinhood.org.nz/28.4.06>

<sup>16</sup> It is estimated that around one in every two nonprofit organizations in Aotearoa/New Zealand may not be legally incorporated (Te Korowai Aroha Aotearoa Inc., Bradford, and Nowland-Foreman 1999, 87). Further, there may not be a significant difference from Australia, where 84 percent of all nonprofit organizations employ no paid staff, and most receive no government funding (Lyons 2001, 24).

activity in this country and the relationship between the state and the sector is likely to continue to be a major focus of debate for the sector.

History has shaped many of the issues discussed further in this paper. First, nonprofit organizations have generally operated within a positive legal and ideological climate in Aotearoa/New Zealand. English common law provided an enabling, rather than a constraining legal environment, and laws generated locally operated in a similar vein. As a result, the nonprofit sector is diverse, a reflection of a variety of different impulses that have shaped its development over time, largely without restriction. Any contrary impulses and restrictive action from government were most evident in times of national emergency.

Second, underlining this diversity are the special characteristics of Maori organizations, which draw upon tribal traditions, sometimes overlain by complex legislative structures derived from the colonial power, but which demonstrate, in their various manifestations, the vigor and adaptability of the indigenous social formations of Aotearoa/New Zealand.

Third, interactions between government and nonprofit organizations were apparent even in the 19<sup>th</sup> century, and the notion of partnership was elaborated more fully during the primacy of the welfare state, especially in the social service sector. The state took on the role of philanthropist to favored organizations and this was, on the whole, fruitful for both parties. A relatively small population and centralized state contributed to the closeness of this relationship. Individual organizations have at various times moved closer to, and apart from, government influence, making some definitional issues time-specific.

Fourth, the more recent rupturing of established, often comfortable relationships between government and some sections of the nonprofit sector is a key theme, which informs much of the following discussion. The “contract culture” of the 1990s increased the ability of government agencies to shape the activities of nonprofit organizations in a more directive way than ever before, raising questions about the boundaries between government control and self-governance. If “partnership” is a key aspiration in the present, it is because history has provided nonprofit organizations with a taste for its possibilities, and because it promises greater autonomy for the sector than is evident under the contractual environment.

## **Part II. Legal Treatment**

The New Zealand legal system is based on the English common law system. There are specific laws and regulations for the major types of nonprofit organizations. These laws and regulations exist at the national level, and are of three main (inter-related) types:

- regulation of an organization’s legal entity or form (laws of incorporation),
- regulation of an organization’s tax treatment, and
- registration, for example, as a charity, a political party, or a trade union.

The discussion below focuses on each of the three types of legal provisions in turn.

There are also many general laws that have particular implications for the running of nonprofit organizations, such as when they employ staff, operate out of premises, or “trade” in goods or services. The New Zealand Federation of Voluntary Welfare Organisations and

the Office for the Community and Voluntary Sector (2006a) identify thirty-four such pieces of legislation, but we do not examine these provisions here.

## Legal Forms

Organizations can be incorporated or unincorporated; if they choose not to incorporate, members of the group are personally liable for the group's debts and are also liable for any damage suffered as a result of the group's actions or negligence. Incorporation creates a separate legal entity that can enter into contracts or agreements, buy and sell property, raise loans, provide for perpetual succession, and limit the liability of members provided that their founding document allows for these activities. It has been estimated that there may be one unincorporated nonprofit organization for each one that is officially incorporated (Te Korowai Aroha Aotearoa Inc., Bradford, and Nowland-Foreman 1999, 87). This could mean there are currently about 50,000 unincorporated nonprofit organizations.

There are restrictions on the type of organizations that may incorporate or gain certain taxation benefits. These are outlined below. Restrictions are also placed on an organization by their constituting documents, as well as the law under which they are constituted.

Except in times of war or national emergency, governments have not overtly restricted the areas in which nonprofit organizations can operate. For example, gangs *per se* are not illegal organizations. The Terrorism Suppression Act 2002 makes provision in New Zealand law for the suppression of terrorism and grants power to the Prime Minister to designate an entity as a terrorist entity or associated entity if s/he believes there is good cause to suspect that the entity has been involved in carrying out terrorist acts.

In the area of religion, the separation of church and state occurred at the time of the colony's establishment, and no one denomination was given a privileged position. This preceded the disestablishment of the Church of England in Great Britain, and reflected the realities of religious dissent (Davidson and Lineham 1987, 71-2). No one form of religion or denomination has preferential treatment in the law. However, the law has been influenced by the Christian belief system that prevailed from the mid 19<sup>th</sup> century to the mid to late 20<sup>th</sup> century. Prior to the 1930s Christian churches had a privileged voice. This influence has gradually declined to the situation today where Christian groups are one interest group among many (Lineham 2000, 49-53). There are some specific exemptions for religious organizations under the Human Rights Act 2004, which allows for educational establishments to be maintained wholly or principally for students of one religious belief (s. 58(1)). The Employment Relations Act 2000 allows for the employment of a principal or teacher in an integrated or private school, or of a social worker by an organization whose members are adherents of a particular belief (s. 28(2)). These exceptions are intended to respect the religious beliefs of adherents (Human Rights Commission 2004).

There are a number of different ways nonprofit organizations can acquire legal personality in Aotearoa/New Zealand and between them they can cope with a wide range of different structures—for example, from small, self-perpetuating, and exclusive groups, to large, open, and democratic constituencies (including multiple constituencies); from complex hierarchical organizations, to “flat” collectives. The oldest of these provisions has been available for a century or more. Both the longevity and relative flexibility of a number of these legal forms may explain the comparatively higher rate of incorporation among New Zealand nonprofits compared, for example, to their Australian counterparts (Te Korowai Aroha Aotearoa Inc.,

Bradford, and Nowland-Foreman 1999, 87). While there is no legal requirement for groups to acquire a legal personality, and many choose not to do so, legal registration of some sort is commonly required in order to receive funds from the state and philanthropic funders. Those groups that choose not to adopt one of the legal forms of registration may find that they are required to have their funds administered by another legally recognized entity, such as another nonprofit organization.

The most common forms of nonprofit organization in New Zealand include an incorporated society, charitable society and trust, company, friendly society, and industrial and provident society. We discuss each of these below.

### ***Incorporated society***

A society incorporated under the Incorporated Societies Act 1908 is a group of not less than fifteen adults<sup>17</sup> associated for any lawful purpose and not for pecuniary gain.<sup>18</sup> These societies are governed by their own rules or constitution, which must comply with certain minimum requirements regarding accountability, purpose, and structure. This form is especially suited for member-run organizations. The Registrar of Incorporated Societies, Ministry of Economic Development, determines whether or not an organization will be registered as an incorporated society. The decision may be appealed to the High Court.

This is the most common form of nonprofit incorporation. In October 2005, 21,500 organizations were registered as incorporated societies,<sup>19</sup> or potentially as much as 60 percent of all registered nonprofit organizations.

### ***Charitable society and trust***

Charitable trusts and societies may incorporate as Boards under the Charitable Trusts Act 1957. A charitable trust in itself is not a separate legal entity—but an arrangement where the trustees hold property for the trust's charitable purposes. To incorporate as a Charitable Trust Board, a minimum of two adult trustees (in the case of a charitable trust) or five adult members (in the case of a society), is required, and the trust or society must meet the common law test of being “exclusively or principally for charitable purposes”<sup>20</sup> or be concerned with religious or educational purposes, whether or not it is defined as charitable. The Registrar of Incorporated Societies, Ministry of Economic Development, determines whether the body's purposes are charitable. The Registrar can register a trust under the Act even if its purpose is not exclusively charitable. The decision to register may be appealed to the High Court.

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<sup>17</sup> Other incorporated organizations (regardless of their legal form) may also be members of incorporated societies. For the purposes of the minimum membership requirements, an organizational member is counted as three persons.

<sup>18</sup> “Pecuniary gain” is not defined in the Incorporated Societies Act, but has been interpreted in cases as referring to any gain resulting from the society's activity that has a monetary value, and any profits made by the society may not be distributed to members (Presbyterian Church of New Zealand Beneficiary Fund v. Commissioner of Inland Revenue [1994] 3 NZLR 363). Sec. 5 of the Act clarifies that “pecuniary gain” does *not* include: division of property among members upon dissolution of the society; members competing with one another for trophies or prizes (other than money); and where a member is paid a salary as a servant or officer of the society.

<sup>19</sup> Ministry of Economic Development, personal communication October 2005

<sup>20</sup> Under the Charitable Trusts Act, charitable purposes are: the advancement of education; the advancement of religion; the relief of poverty, sickness, or disability; or any other purpose that is beneficial to the community. Not every trust or society with a publicly beneficial purpose will qualify as a charity. For example, providing recreational facilities purely for the promotion of sport or social activities is not charitable as these activities are generally undertaken for entertainment or amusement (which are not charitable purposes), and tend to be promoted for the benefit of members rather than the general public.



Charitable trust boards in law are not necessarily structured along democratic lines and do not have to follow democratic processes (Von Dadelszen 2000, 225). However, they can choose to have members that elect trustees while, in other cases, other bodies appoint trustees. The self-perpetuating trust (that is where trustees are *not* elected by members) is more common.

Trusts that are registered as charitable trust boards are designed to be driven by the charitable purpose set out in the trust deed, and are particularly suitable where that is more important than responding to the changing needs or priorities of a membership base. The charitable purposes (and other aspects of the trust deed or the society's rules) may in some circumstances, with the agreement of the Registrar, be changed by a supplemental deed; otherwise it requires a determination of the High Court. This is the second most common form of nonprofit incorporation. In October 2005, 15,000 organizations were registered as charitable trusts,<sup>21</sup> which may constitute as much as 30 percent of registered nonprofit organizations.

### ***Company***

Companies can also be used as nonprofit vehicles.<sup>22</sup> This was facilitated by the 1993 Companies Act, but is still not a common form. Charitable companies face onerous and complex reporting and other compliance requirements. On the other hand, there are specific legislative provisions, which may provide greater certainty about the duties of company directors. A minimum of one shareholder and director is required. A constitution is not necessarily required, as the powers of the Companies Act will automatically apply, but a specially drafted constitution is usually recommended to meet the needs of a particular organization (New Zealand Federation of Voluntary Welfare Organisations and the Office for the Community and Voluntary Sector 2006a). Furthermore, to obtain tax exemptions, a specially drafted constitution is required. Companies are registered with the Registrar of Companies, Ministry of Economic Development.

### ***Friendly society***

Some societies may be incorporated under the Friendly Societies and Credit Unions Act 1982. The minimum membership is seven adults who join together as a friendly society, a society for a benevolent or charitable purpose, a working men's club, or a specially authorized society. Registration is undertaken by the Friendly Societies and Credit Unions Registrar, Ministry of Economic Development. Although some of the more recent medical insurance schemes have registered under this legislation, membership of traditional friendly societies has declined, especially as provision for the sick and other social welfare provisions were picked up by the state in the last century.

### ***Industrial and provident society***

This is an association of at least seven adults who come together for the purpose of carrying on an industry, trade, or business. These types of organizations are more commonly known as mutuals and cooperatives. Incorporation is available under the Industrial and Provident Societies Act 1908 for cooperatives working to benefit the community in some way. Members can own part of the society's assets and a profit may be paid out to members. Shares are permitted but may be of nominal value, and voting must be "one person, one vote." Industrial and provident societies are not as common now as they were historically. Nonetheless, in the 1990s the New Zealand Cooperatives Association had a membership base of 50 among which

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<sup>21</sup> Ministry of Economic Development, personal communication, October 2005

<sup>22</sup> For more information on charitable companies see: [www.companies.govt.nz](http://www.companies.govt.nz)

agricultural cooperatives dominated (Te Korowai Aroha Aotearoa Inc., Bradford, and Nowland-Foreman 1999, 90). However, a number of the newer cooperatives are small “community cooperatives”—often established by Maori communities.<sup>23</sup> The Registrar of the Industrial and Provident Societies, Ministry of Economic Development undertakes registration.

Mutuals and cooperatives are considered by some to be part of a broader nonprofit sector (see for example Lyons 2001, 7-8), but as they are able to distribute pecuniary benefits to members, they generally fall outside the structural-operational definition of nonprofit organizations employed in this study discussed in Part IV.

### ***Maori legal structures***

Maori nonprofit organizations may be unincorporated or incorporated under any of the forms discussed above. However, there are also some Maori-specific legal structures. Tribal *runanga* (councils) were established by Governor Sir George Grey from the 1860s. Another set of tribal councils was established in 1900, tribal committees in 1945, and from the 1920s to the present “a bewildering array of tribal boards have been constituted by separate statutes” (Law Commission 2006, 37). The Runanga Iwi Act 1990 was an attempt to provide a general legal framework for tribes, but was repealed in 1991.<sup>24</sup>

Many iwi choose to operate as Maori trust boards under the Maori Trust Board Act 1955. This Act provides reasonably precise powers, objectives, accountability, and reporting rules. However, that also means it is sometimes seen as overly prescriptive and inflexible compared to the Incorporated Societies or Charitable Trusts Act.

There are also five different types of trusts which may be established under Te Ture Whenua Maori Land Act 1993/ Maori Land Act 1993: putea trusts, whanau trusts, kai tiaki trusts, ahu whenua trusts, and whenua topu trusts. The first two are the most commonly used. Each has different purposes and rules, however the primary goal is to retain Maori land in Maori ownership. Only owners of Maori land or their trustees can set up a trust and the trust may make and distribute profits (such organizations would generally be outside the scope of the CNP definition, as will be discussed in Part IV). They are all registered with the Maori Land Court.

Both Te Puni Kokiri (the Ministry for Maori Development) and the Law Commission (2002), identified deficiencies and concerns with existing legal forms available to iwi and other Maori organizations. Recently, the Law Commission (2006) has proposed that a new legal framework (Waka Umanga Act) be developed that would be specifically shaped to meet the needs of iwi, hapu, and other Maori groups, especially those managing communal Maori assets following settlement of Treaty of Waitangi claims.

### ***Other empowering legislation***

There are also many religious and other organizations that are incorporated by their own empowering legislation, for example the Anglican Church Trusts Act 1981, Te Runanga o Ngai Tahu Act 1996, Roman Catholic Bishops Empowering Act 1997, Royal New Zealand

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<sup>23</sup> For further information relating to the establishment of cooperatives see: [http://www.nzco-ops.org.nz/new/About\\_us\\_fset.htm](http://www.nzco-ops.org.nz/new/About_us_fset.htm)

<sup>24</sup> The reasons for repeal were politically complex, but it was claimed that the Act was a legislative intrusion into affairs best left to Maori to decide. It was also argued that the Act over-emphasised iwi as the basis of government funding allocations to Maori (*New Zealand Parliamentary Debates*, 1991, vol. 514, 1700-1728).

Foundation of the Blind Act 2002, and Te Whanau-a-Taupara Trust Empowering Act 2003. Other Maori tribal entities are recognized or incorporated under Treaty settlement legislation,<sup>25</sup> for example Te Runanga o Ngati Ruanui Trust in the Ngati Ruanui Claims Settlement Act 2000.

## **Tax Treatment**

The taxation status of a nonprofit organization can be vital to its viability and continued existence. Individual nonprofit organizations have a variety of taxation obligations but some exemptions are available. Those nonprofit organizations that have charitable status have the most significant exemptions. In addition, individuals and companies may be eligible for an income tax rebate for donations to certain specified organizations. These are referred to as “donee” organizations.

Tax concessions and rebates are administered by the Inland Revenue Department. Generally organizations can qualify for tax exemption or concessions regardless of their legal structure (such as incorporated society, charitable trust, or company) or whether they are incorporated or not. However, the Inland Revenue Department strongly encourages incorporation and, from the middle of 2008, charitable organizations seeking charitable status to gain exemption from income tax will be required to register with the newly established Charities Commission.

### ***Income tax and gift duty***

#### **(1) Charities**

Charitable organizations can seek exemption from paying tax on income, other than business income, and gifts to them can be exempt from gift duty if their founding document complies with the requirements of the Inland Revenue Department and forthcoming requirements of the Charities Commission. The organization must be established for charitable purposes and it must carry out charitable activities - that is, by falling under one of the four purposes drawn from the Preamble to the Statute of Elizabeth 1601. Often known as the four “heads of charity,” these are:

- the relief of poverty,
- the advancement of education,
- the advancement of religion, and
- other purposes beneficial to the community.

In addition, the organization’s activities or aims must be available for the benefit of a large part of the community and it must not be carried on for individual benefit. This is generally known as “charitable” tax status.

It is also possible for nonprofit organizations to apply for an exemption from business income tax, however the Department of Inland Revenue will require further restrictions in the founding document and business income is not able to be used for purposes outside of Aotearoa/New Zealand.

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<sup>25</sup> “Treaty settlement” refers to agreements reached between the Crown and an iwi as a settlement for past grievances and illegal actions by which the Crown acquired, retained, or confiscated Maori land.

## (2) Other nonprofit organizations

In addition, clubs and societies for the promotion of any amateur game, sport, arts, cultural, and other recreational organizations may qualify for limited exemptions from paying income tax, as may district improvement societies, and herd and livestock promoters, scientific or industrial research bodies approved by the Royal Society of New Zealand, veterinary associations, community trusts, and racing clubs.

Under the Taxation (Maori Organizations, Taxpayer Compliance, and Miscellaneous Provisions) Act 2003, a number of specific entities are eligible for a concessional income tax rate of 19.5 percent. These entities manage land held in Maori ownership, or Maori assets in other resources, including fisheries. They must meet the qualifying criteria and elect into the system. The Act specifies those entities that are eligible to be granted Maori authority status.<sup>26</sup> A law change in the Charities Act 2005 may allow additional Maori organizations, which otherwise meet the criteria for being charitable, to obtain further tax exemptions, as they will not be barred from registration due to their blood ties.

Any organization unable to achieve one of the above exemptions, and not set up for personal benefit of any group or individual, may qualify for an alternative tax exemption on the first \$NZ1,000 of income. This is often a valuable form of assistance to small, informal nonprofit organizations. This is sometimes referred to as “nonprofit” tax status.

Incorporated societies, charitable trusts, and companies that do not qualify for any of the above concessions generally pay a tax rate of 33 percent. Unincorporated organizations, which do not qualify for any of the above concessions, generally pay tax at the rate for individual taxpayers (which varies depending on the level of their income).

### ***Rebates on charitable donations***

Individuals and companies may claim a 33 percent rebate on their income tax for donations to certain “donee” organizations up to specified annual limits (up to \$NZ1,890 in eligible donations for individual taxpayers and up to 5 percent of net income for companies).

In terms of achieving donee status with the Inland Revenue Department, donee organizations must be Aotearoa/New Zealand organizations, and their funds must be wholly or principally applied to charitable, benevolent, philanthropic, or cultural purposes in Aotearoa/New Zealand. Cultural purposes include dramatic, theatrical, operatic, ballet, choral, or musical purposes. Benevolent and philanthropic purposes mean doing good for other people; this includes organizations that are not charitable in the strict legal sense, but are popularly regarded as charitable. It includes organizations whose proceeds or funds are used to benefit all or a large part of the public. Societies for the promotion of an amateur game or sport are usually not eligible for donee status, even though they may be eligible for income tax exemption. On the other hand, district improvement societies, and herd and livestock promoters may be eligible for donee status. Eligibility is determined by the Inland Revenue Department.

Some organizations are considered donee organizations even though they do not meet the “use of funds in New Zealand” condition. This is because they have a wide enough public appeal to warrant an exception and they include such groups as Red Cross Society Inc,

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<sup>26</sup> For further information relating to the tax status of Maori organizations see: [www.ird.govt.nz/maori-organizations/maori-organizations-index.html](http://www.ird.govt.nz/maori-organizations/maori-organizations-index.html)

United Nations Children's Fund (UNICEF), Save the Children, and Amnesty International. However, these groups are required to be listed in legislation and require specific approval from government. Most of the major overseas aid and development nonprofit organizations based in Aotearoa/New Zealand are named in this listing.

## Registration

### *Registered charity*

The Charities Commission was established under the Charities Act 2005 to promote public trust and confidence in the charitable sector, to educate and support charities, and to register and monitor charities that wish to be exempt from income tax. The register is due to be set up in 2007. Registration is not compulsory and organizations that do not register may still call themselves a charity (though not a "registered charity") and may still solicit funds from the public. Registration also has no bearing on an organization's legal status, and it is possible for an organization to register only with the Charities Commission and not be incorporated. A charity will, however need to be registered with the Charities Commission if it wishes to obtain or retain its income tax exemption. Registration is with the Commission, and the Commission will advise the Inland Revenue Department that an organization is registered. Inland Revenue will retain responsibility for income tax exemptions for eligible organizations.

To be eligible for registration the objectives of an organization must meet the common law test for charitable purposes under the four "heads of charity" drawn from the Preamble to the Statute of Elizabeth 1601, as outlined above.

An eligible organization is required to be established and maintained exclusively for charitable purposes and not for the private pecuniary gain of any individual. Charitable purposes can also apply to an organization where the beneficiaries are related by blood, provided the charitable purpose of the organization satisfies the public benefit test. For example, a *marae*<sup>27</sup> has a charitable purpose if it is situated on Maori reservation land that is referred to in Te Ture Whenua Act 1993, and the funds of the marae are used for administering the land and physical structure of the marae.

An organization's main purpose must be exclusively charitable. Thus, an organization set up to change the law or oppose a law change would not be defined as charitable for these purposes. However, an organization is permitted to have a non-charitable purpose (such as lobbying or advocacy), which is not its primary purpose (section 5(3) Charities Act 2005). That is, advocacy can occur as an adjunct or incidental to its charitable activities. So while a charitable organization cannot have advocacy as its main purpose, it can engage in appropriate advocacy as a secondary purpose to achieve its main charitable purpose (New Zealand Federation of Voluntary Welfare Organisations and the Office for the Community and Voluntary Sector 2006b).

The Charities Commission also has the power to monitor registered charitable organizations to ensure that they continue to meet their charitable purposes after registration. The Commission has enforcement powers and can impose administrative penalties, issue warning notices, publicize instances of noncompliance on the register, initiate formal investigations, and de-register an organization that persistently or seriously fails to meet its obligations under

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<sup>27</sup> Marae is defined by Barlow (1991, 73) as: "a symbol of tribal identity and solidarity. Formerly the marae proper was designated as the open area of land directly in front of the sacred carved house... Nowadays all the buildings associated with a community facility are collectively known as a marae."

the Act, including failure to fulfill its charitable purposes (sections 10, 31, and 32). Decisions of the Commission not to register or to de-register an organization are reviewable by the courts (Charities Act 2005, s59).

### ***Political parties***

Registration of political parties is available under the Electoral Act 1993, and is required if a party intends to contest party seats in national elections. Unregistered political parties may contest electorate seats only. Registration is undertaken by the Electoral Commission and requirements include a name that is not likely to cause offense or confusion and at least 500 financial members who are eligible to vote. Registration is only relevant to electoral-related law and does not change or establish the legal form of a political party (such as incorporated or unincorporated society, or limited liability company). There are currently 23 registered political parties in Aotearoa/New Zealand.<sup>28</sup>

### ***Trade unions***

An incorporated society, which meets the criteria set out in the Employment Relations Act 2000, may register as a union under the Employment Relations Act 2000.<sup>29</sup> They must first register as incorporated societies under the Incorporated Societies Act, meeting that Act's requirements and then register as a union under the Employment Relations Act. Registered unions must be independent of employers and their rules must be democratic and not unfairly discriminatory. Application for registration under the Employment Relations Act is made to the Registrar of Unions, Department of Labour. In December 2004, there were 170 registered trade unions, with a membership of 350,000 (Blackwood, Feinberg-Danieli, and Lafferty 2005, 2).

Legal frameworks and government regulations constitute one very important set of criteria that can be used to identify nonprofit organizations. Conceptual frameworks allow us to examine the ways in which these formal rules and regulations are applied in particular contexts and to gather data that enhance our understanding of this diverse and complex sector within and between countries, and it is to the conceptual frameworks that we now turn.

## **Part III. Major Types of Nonprofit Organizations in New Zealand**

Given the complex history of nonprofit organizations in Aotearoa/New Zealand, and the varied legal forms that such organizations can take, it should come as no surprise that the nonprofit sector is diverse and operates in a wide range of fields. This section summarizes this diverse, but somewhat invisible, landscape of nonprofit activity in using the classification scheme developed as part of the Johns Hopkins CNP to organize the discussion. Table 1 summarizes the major types of Aotearoa/New Zealand nonprofit organizations using the ICNPO structure. While not exhaustive, the table illustrates where organizations are most likely to be classified in the ICNPO. The discussion that follows provides a brief illustration of the range of organizations found within each of the ICNPO groups. It also draws particular attention to a specific set of organizations concerned with managing the affairs of Maori. As

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<sup>28</sup> For additional information relating to political parties see:

[http://www.elections.org.nz/parties/registered\\_political\\_parties.html](http://www.elections.org.nz/parties/registered_political_parties.html)

<sup>29</sup> The Employment Contracts Act 1991 stopped the practice of union registration during most of the 1990s, until it was reinstated by the Employment Relations Act.

noted throughout this report, these groups are not easily visible within the ICNPO, but nonetheless they have a very important place in social life within Aotearoa/New Zealand.

**Table 1. Summary of Major Types of Nonprofits in New Zealand**

<b>ICNPO Group</b>	<b>Nonprofit organizations in New Zealand</b>	<b>Organizations not likely to be part of the nonprofit sector in New Zealand</b>
<b>1. Culture and recreation</b>	<ul style="list-style-type: none"> <li>• Many arts groups, especially at a local level (e.g., arts societies, spinners and weavers groups, film societies) and also some of the most prestigious national cultural groups e.g., in ballet, opera, etc.</li> <li>• Most sports groups, especially at the club level</li> <li>• Many museums and galleries, often smaller ones; not owned by local government or commercial operations</li> <li>• Some local community newspapers and radio stations</li> <li>• Service clubs (e.g., Lions, Rotary)</li> </ul>	<ul style="list-style-type: none"> <li>• The large proportion of arts activities undertaken by individual artists and commercial enterprises</li> <li>• Commercial sports businesses and franchises</li> <li>• Museums and galleries owned by the local government</li> <li>• Most high profile newspapers, radio and TV broadcasters, which are commercial or state owned</li> </ul>
<b>2. Education and research</b>	<ul style="list-style-type: none"> <li>• A few elementary (known as primary) and secondary schools</li> <li>• Many, often smaller, tertiary education providers</li> <li>• Most informal and small adult or community education</li> <li>• Some research, which is undertaken by nonprofit bodies, mostly in medicine and social sciences</li> <li>• Most early childhood services (see discussion re: kindergartens; Statistics New Zealand 2005a)</li> </ul>	<ul style="list-style-type: none"> <li>• Public elementary and secondary schools (which comprise the majority of educational institutions in New Zealand)</li> <li>• Public universities and most polytechnics</li> <li>• The three Wananga, which are not institutionally separate from government</li> <li>• Adult or community education provided through evening programs run by public schools (unless there is a separate nonprofit entity through which funds are channeled)</li> <li>• Most of the research which is undertaken by universities, government bodies, and private firms</li> </ul>
<b>3. Health</b>	<ul style="list-style-type: none"> <li>• A small number of union and community health services, and all Primary Health Care Organizations (PHOs)<sup>30</sup></li> <li>• A few church and other private hospitals which are nonprofit</li> <li>• Most palliative care services</li> <li>• A large number of mostly smaller and non-residential mental health services, including iwi providers</li> </ul>	<ul style="list-style-type: none"> <li>• Most primary care services provided through General Practitioners</li> <li>• Public hospitals, which dominate the health field</li> <li>• Private hospitals that make a profit</li> <li>• Public mental health services</li> <li>• For-profit rest homes and some aged care hospitals providing care for older people</li> </ul>

<sup>30</sup> PHOs are funded by government to provide a total range of preventive and remedial primary health services.

	<ul style="list-style-type: none"> <li>• Some rest homes and aged care hospitals providing care for older people</li> <li>• A wide range of nonprofit organizations providing disability health services</li> <li>• Most ambulance services, air-rescue services, and surf patrols</li> <li>• Most emergency services</li> <li>• Some support services for children provided by nonprofit organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Some emergency health services</li> </ul>
<b>4. Social services, and emergency/ relief</b>	<ul style="list-style-type: none"> <li>• Most providers of social services, including iwi providers (nonprofit organizations are especially significant providers in disability services, in family services and in community services for older people)</li> <li>• Nonprofit employment services</li> <li>• Nonprofit emergency services</li> <li>• Some support services for children provided by nonprofit organisations</li> </ul>	<ul style="list-style-type: none"> <li>• Government and commercial providers of social services (e.g., most statutory child protection services, commercial home help services)</li> <li>• Government and commercial employment services</li> <li>• Emergency services that are set up by local government</li> </ul>
<b>5. Environmental / animal protection</b>	<ul style="list-style-type: none"> <li>• Most environment and animal protection groups</li> </ul>	<ul style="list-style-type: none"> <li>• Government agencies with environmental responsibilities</li> </ul>
<b>6. Development and housing</b>	<ul style="list-style-type: none"> <li>• Limited direct housing provision, especially social housing</li> <li>• Neighborhood centers and houses and most community development projects (except those provided by local government)</li> <li>• Employment and training groups, e.g., industry training organizations</li> </ul>	<ul style="list-style-type: none"> <li>• Public housing, including local government housing</li> <li>• Private landlords, who together with public housing provide almost all rental housing</li> <li>• Community development workers employed by local or (to a lesser extent) central government</li> </ul>
<b>7. Civic and advocacy groups</b>	<ul style="list-style-type: none"> <li>• Advocacy groups representing particular and local interests</li> <li>• Political parties</li> <li>• Legal aid services, such as community law centers</li> </ul>	<ul style="list-style-type: none"> <li>• Commercial legal practices, which provide not only almost all legal services but also the bulk of legal aid</li> </ul>
<b>8. Philanthropic and other intermediaries</b>	<ul style="list-style-type: none"> <li>• Volunteer promotion and brokerage groups, such as volunteer centers</li> <li>• Philanthropic trusts and foundations (including family trusts, community trusts, gaming trusts, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>• Government funding agencies (which are the dominant funders of nonprofit organizations)</li> <li>• Corporate social responsibility programs (which are very small as a proportion of total funding to nonprofit organizations)</li> </ul>
<b>9. International organizations, aid and relief</b>	<ul style="list-style-type: none"> <li>• Most overseas aid and development organizations</li> </ul>	<ul style="list-style-type: none"> <li>• New Zealand Agency for International Development</li> <li>• Defense forces</li> <li>• Private consultants and contractors</li> </ul>



<b>10. Religious congregations and associations</b>	<ul style="list-style-type: none"> <li>• Churches, mosques, temples, synagogues</li> <li>• Almost all other religious organizations (except where they fit within another category, e.g., church social services, religious hospitals, church schools, etc.)</li> </ul>	
<b>11. Unions, business and professional associations</b>	<ul style="list-style-type: none"> <li>• Professional associations, trade unions, business associations</li> <li>• Chambers of Commerce</li> </ul>	
<b>12. Not elsewhere classified</b>	<ul style="list-style-type: none"> <li>• Organizations where it is not clear which ICNPO category they should be assigned to</li> </ul>	

### **Sport, Recreational, Cultural, and Artistic Groups**

A diverse range of nonprofit organizations is active in the sports, recreational, cultural and artistic fields. The depth and diversity of these organizations draw upon and reflect the rich character of associational life historically. Sports organizations range in size from very small to very large and include both professional and amateur components. Local groupings are often aggregated into larger regional or national networks. There is also a range of non-sporting recreational organizations catering to both general and specific needs. For instance, in the area of youth activity there are guides, scouts, cubs, and keas (locally developed scout groups for children aged 6-7 years). Furthermore, there is a wide range of groups whose primary purpose is social. Sometimes these combine the social and sporting or other interests together, and at other times they have a single focus on social activity. In addition, there is a wealth of groups that enable citizens to participate and pursue interests and hobbies. Within the sport, recreational, cultural and artistic fields are a number of specific groups that cater to the needs and interests of Maori.

Examples include: Aotearoa Maori Tennis Association Incorporated, Ashburton West Side Soccer Club Inc., Ashhurst Action Group, Auckland Seido Karate Club Incorporated, Buffalo and Bison Social Club Manawatu Incorporated, Canterbury Botanical Art Society, Clutha United Swimming Club Incorporated, Cycling New Zealand Federation Incorporated, Dannevirke Art Society, Feilding District Steam Rail Society, Hornby Working Men's Club and Mutual School of Art Incorporated, Maori Institute of Sport Trust, Nga Hua o te Harakeke, Tautai Contemporary Pacific Arts Trust, Ngati Whatua o Orakei Volcanoes Sports and Culture Club.

### **Education**

#### ***Early childhood and out of school care providers***

In general terms, early childhood services are provided by either nonprofit organizations or profit making entities. The provision of day care typically occurs within an educational context; providers deliver an early childhood curriculum alongside daycare. In addition to mainstream providers, there are a number of specific early childhood organizations that provide total immersion language services for Maori children (*Kohanga Reo*) and also for Pacific children (Pacific language nests). These are all nonprofit providers. Kindergarten staff are public sector employees, but each local provider functions as an incorporated society.

They are thus an anomalous organizational form, sitting at the boundary between the nonprofit and state sectors. In the compilation of the Satellite National Account, they are included as nonprofit entities because of their incorporated society status.

### ***Schools and colleges***

Schools and colleges are either public (government owned) or private. The latter include church and other nonprofit schools (included in the CNP), as well as those that are run as private profit making institutions (excluded from the CNP). Many of these draw on state funding. *Kura kaupapa* Maori are total immersion Maori language schools and can be constituted as nonprofit organizations. There is also a range of nonprofit activities that take place around schools, such as parent teacher associations (PTA).

### ***Tertiary education***

The tertiary education field has a mixture of government funded, nonprofit, and profit-making providers. Most of these organizations charge fees for student enrollment and also draw on government funding.

Universities are a part of the state sector. They are governed by councils that include ministerial appointees, and they operate as public institutions. In terms of control over assets, universities are not able to dispose of land without the approval of the Ministry of Education.

Other tertiary education providers include polytechnics, which are state owned, *Wananga* (Maori tertiary education providers) and private training establishments (PTEs). *Wananga* are not considered part of the nonprofit sector because they are not sufficiently institutionally separate from government (see Statistics New Zealand 2005a, 9), even though they arose from non-government initiatives. PTEs may take the nonprofit form.

A large number of nonprofit organizations deliver adult education or training in particular localities or for specific training needs. This includes organizations that deliver trade and other training (Industry Training Organisations or ITOs), as well as community providers that deliver learning support to adults in the areas of literacy, numeracy, and life skills. Some of these latter organizations are linked together under the umbrella of Literacy Aotearoa.

Examples of nonprofit educational organizations include: Achieve - The National Post-Secondary Education Disability Network NZ Incorporated, Adventist Early Childhood Centre Trust, Arohaina Te Kohanga Reo Charitable Trust, Canterbury Adult Basic Education Research Network (Cabern) Incorporated, Central Otago Rural Education Activities Program (REAP) Incorporated, Devonport Methodist Child-Care Centre Trust, Hawkes Bay Outdoor Education and Recreation Trust, Literacy Aotearoa Incorporated, Nga Tikanga Pono te Kohanga Reo Society Incorporated, Toddlers Turf Child Care Centre Incorporated.

## **Health**

Most hospitals are publicly owned and provide comprehensive secondary and tertiary care. A small number are privately owned and run on a for-profit basis and some are operated on a nonprofit basis, as incorporated societies, charitable trusts, or friendly societies. Private hospitals (profit or nonprofit) predominantly provide elective (non-urgent) surgical care.

Emergency services are provided by a range of nonprofit organizations. For instance, St. John Ambulance provides ambulance and emergency services on a national basis, and volunteers,

particularly in small communities, comprise a significant proportion of the workforce. Rescue services are also provided by some nonprofit organizations and this includes rescue helicopters.

There is a strong tradition of work by what is called “the religious and welfare sector” in the elderly care sector. Rest homes were originally run by a mixture of public sector and religious welfare organizations and are now run predominantly by nonprofit and private sector providers. A wide range of organizations provide community-based health services and activities that include women’s health, Pacific health, and mental health services. Alongside this is a significant group of organizations that provide non-hospital health services and support to Maori. Some of these are provided out of iwi structures while others operate as Maori or *kaupapa*<sup>31</sup> Maori service providers.

As a result of the government’s Primary Health Strategy (2001), new nonprofit organizations, PHOs, have been created for the purposes of organizing and ensuring delivery of primary health care services to defined populations.

Examples of nonprofit health organizations include: Aoraki Primary Health Organization, Best Care (Whakapai Hauora) Charitable Trust, Chinese Women's Wellness Community Group, Hauora Waikato Maori Mental Health Services, Health Action Trust (Nelson), Otaki Women's Health Group, Phoenix Incorporated, Poutiri Charitable Trust, Schizophrenia Fellowship New Zealand Incorporated, Tautoko Services, Wanganui Air Ambulance Trust.

### **Social Services (includes housing in Aotearoa/New Zealand)**

A diverse range of organizations is active in the social services field. A significant group here are iwi related social services, Maori providers that work either exclusively with Maori, or that work from a kaupapa Maori base. Other organizations focus on the needs of different migrant groups, the elderly, parents, and young people in a wide variety of ways. Historically, there have been few exclusively nonprofit housing organizations, although there are indications that this is changing. Most, such as services for homeless people and for responding to domestic violence, have traditionally provided accommodation along with care and support.

Social service organizations vary from small local initiatives established to address one or a small number of quite specific issues or needs, to large, national organizations providing a diverse range of services throughout the country. Many of the established social services are provided by religious organizations—sometimes as stand-alone entities and sometimes as part of the ecclesiastical structure or as an informal activity undertaken through a locally based religious place of worship.

Examples of nonprofit social services include: Alexandra Community Youth Trust, Anglican Social Services (Wanganui) Trust Board, Ashburton Community Alcohol and Drug Service Incorporated, Auckland City Mission, Barnardos New Zealand Incorporated, Community Budget Service Kerikeri, Onehunga - Mangere Runanga A Iwi Roopu Social Services, Tautua Samoa Cultural Social Service, Suluia-Ile Malama Community Social Service Trust, Te Aroha Noa Community Services, Te Ropu Atawhai, Te Whanau O Waipareira Trust, The Pacific Foundation.

<sup>31</sup> *Kaupapa* means principle, philosophy, or policy.

## Environmental

Nonprofit organizations working on environmental issues span the spectrum from those affiliated or linked to international agencies, to very local organizations working on protection of specific places or wildlife in particular areas. This grouping also includes organizations that are engaged in animal protection activities.

Examples include: Coromandel Watchdog, Greenpeace, Hokianga Harbour Care Collective Incorporated, New Zealand Botanical Society, Royal Forest and Bird Protection Society, The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated, Yellow Eyed Penguin Trust.

## International Aid and Development

Aid and development nonprofit organizations and international associations are also active in Aotearoa/New Zealand. Many of these organizations support development in other countries and focus upon provision of support for development, aid, and social justice.

Examples include: Amnesty International, Caritas, Christian World Service, Oxfam, Red Cross, Save the Children, World Vision.

## Other Nonprofit Organizations

There is a range of other nonprofit organizations in New Zealand, including:

**Political parties** can be registered or not, but need to be registered if they wish to stand candidates for “party” seats in the national elections. Generally, political parties are composed of two parts—a parliamentary wing (of elected politicians) and general membership (often called the “party organization”).

**Religious bodies** exist in a variety of forms. They can take the form of places of worship, such as churches, synagogues, mosques, temples, and shrines, which promote religious beliefs and administer religious services and rituals.

**Professional and business associations, trade unions, representative bodies:** Trade unions operate in a range of domains to represent workers and these are also grouped together into larger representative entities, such as the New Zealand Council of Trade Unions. There are also a range of groupings representing collective business and other interests. This grouping includes Ratepayers and Residents Associations, which have actively engaged many citizens across the country in representing local issues, and umbrella organizations that represent groupings of other entities, for instance Local Government New Zealand, the Employers Federation, the Federation of Voluntary Welfare Organizations and District Health Boards New Zealand.

**Philanthropic trusts and foundations** are grant-making organizations and include community trusts (such as Trust Waikato, established under the Community Trusts Act 1999), energy, licensing and other “statutory” trusts (such as Rotorua Energy Charitable Trust), family foundations (such as Tindall Foundation), and gaming trusts (also known as “pub charities,” such as the Lion Foundation). These can be large, as in the cases cited, and

also very small, such as trusts established to administer funds from deceased estates for specific charitable purposes.

### **Tangata Whenua Governance Organizations**

The Treaty of Waitangi established a partnership relationship between the Crown and iwi/Maori as *tangata whenua*.<sup>32</sup> The nature of that relationship needs to be considered carefully in any exploration of the nonprofit sector. This relationship has important implications for discussion of iwi/Maori organizations within the context of this project.

While some Maori organizations, such as Maori social services and kura kaupapa schools, fit within the different fields discussed earlier in this section there is a group of organizations that are concerned with managing the affairs of iwi, hapu, marae, and non-field specific aspects of Maori life. These organizations give a particular character to the nonprofit sector in Aotearoa/New Zealand, and discussion of the sector needs to take account of them. A rich array of organizations provide stewardship for the affairs of iwi, hapu, and marae and, as noted above, these are an important part of the fabric of contemporary Aotearoa/New Zealand society in general, and the nonprofit sector in particular.

Our understanding of the nonprofit sector needs to allow for clear recognition of the particular place of these specific Maori nonprofit organizations within Aotearoa/New Zealand (Community and Voluntary Sector Working Party 2001, 17). In this connection, the Law Commission (2006, 38) has noted:

Clearly, a tribe is much more than a club that may be formed and unformed with relative ease. It is essentially a body politic that, by dint of history, historical association with place, and an accumulated social and cultural infrastructure, exists as a corporate entity in an inherent capacity.

The roles that these organizations take in relation to the Maori people vary in terms of the origins of their mandates:

- Most have roles that originate in the past, prior to European settlement and which encompass the ongoing governance or stewardship of the iwi in perpetuity;
- Some have statutory responsibilities, such as those resulting from financial settlements based on claims against the Crown;
- Still others may be established at different points by iwi in response to contemporary issues.

What all of these entities share in common is a focus on the ongoing health and vitality of the iwi, the transfer from generation to generation of the essence of the iwi, as well as the care and protection of iwi interests in general and specific matters. For the purposes of the CNP, these organizations need to be identified and counted separately from other, field-specific Maori centered organizations, such as Maori health providers, iwi social services, or Maori or iwi art, culture, and sporting organizations. The latter can be identified and counted within the appropriate field, while these specific tangata whenua governance organizations need to be included separately within the Satellite National Account.

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<sup>32</sup> *Tangata whenua* literally translates as “people of the land” and refers to the indigenous people of Aotearoa/New Zealand.

## **Application of the ICNPO to New Zealand**

In general, the ICNPO categorizations fit the New Zealand situation well. There are some groupings within the ICNPO that vary in the local context, but these are not significant enough to require any major adaptation or classification within the NPI satellite account, for instance:

- The ICNPO identifies sports and arts as sub-groups of the ICNPO Group “culture and recreation.” In New Zealand a more intuitive approach would be to classify “arts, culture and heritage” and “sport and recreation” as separate groups.
- The ICNPO places housing services within a separate group from social services. In New Zealand, housing activity has historically occurred from within social service organizations, as has community development.
- Emergency services are a sub-group of the ICNPO social services group. In New Zealand emergency services are not usually classified as a form of social service.

In order to avoid double counting, ICNPO requires that organizations be classified according to their primary economic activity and organizations can be allocated to only one category. In the Aotearoa/New Zealand context many nonprofit groups perform diverse roles and operate across more than one field. As is the case in other countries that have applied ICNPO to the nonprofit sector, the application of ICNPO to the Aotearoa/New Zealand sector will not allow for analysis of multi-purpose organizations. This is a dilemma faced by all classification systems.

There are two areas where the ICNPO can be adapted to ensure that the NPI satellite account reflects the New Zealand context:

- Early childhood education is part of the sub-group “primary and secondary education.” To reflect the significance of early childhood education in the nonprofit sector in New Zealand, early childhood providers will be specifically distinguished within ICNPO Group 2, “education and research” in the compilation of the NPI satellite account.
- Tangata whenua governance organizations that are concerned with stewardship of the affairs of hapu and iwi will be recorded in a new sub-group in the compilation of the NPI satellite account. This sub-group will capture those iwi/Maori organizations that have responsibility for hapu and/or iwi affairs.

## **Part IV. The Structural-Operational Definition**

The structural-operational definition of the nonprofit sector is a conceptual framework developed with the input of researchers participating in the international CNP that has been tested in all the countries that have engaged in this research endeavor. It is also the definition used as a reference in the UN Handbook on Nonprofit Institutions in the System of National Accounts, which was developed by the Johns Hopkins Center for Civil Society Studies in cooperation with the United Nations Statistics Division and an international team of statistical experts, and which is now being implemented in numerous countries around the world. Work is being undertaken by Statistics New Zealand to apply this conceptual framework to the statistical measurement of the sector in Aotearoa/New Zealand.

The structural-operational definition emphasizes the basic structure and operation of nonprofit organizations. Specifically, the nonprofit sector is defined as the set of entities that are:

- organized,
- private,
- non-profit-distributing,
- self-governing, and
- non-compulsory (Salamon and Anheier 1997).

To be considered part of the nonprofit sector, an organization must meet all five of these criteria. Most nonprofit organizations in New Zealand fulfill all of these criteria, which attests to the adequacy of the international definition to the national reality. This international framework provides a useful tool for understanding the sector and comparing it with other countries, however in all countries some organizations occupy a grey area, therefore constituting borderline or hybrid cases. The discussion below of each of the five criteria identified in the structural-operational definition identifies that, by and large, they fit the Aotearoa/New Zealand context well. There are some cases where organizations sit at the boundary, and the following discussion also identifies these cases.

Earlier sections of this paper noted difficulties surrounding the “nonprofit” associational form as applied to Maori society. These difficulties are acutely focused with the application of the five dimensions of the structural-operational definition. Many (but not all) Maori groups and organizations draw upon tribal or descent-group bases of interaction, while conforming, to various degrees, with contemporary legal, managerial and commercial requirements. Though they increasingly draw upon more than one cultural framework, they are not necessarily self-contained and private in the ways in which these terms have been used more widely to describe nonprofit organizations. They are constantly evolving, partly in response to government pressures toward greater solidity of form and lines of accountability. The definitional imperatives (of which this project is a part) have been more important to government and other funding bodies than to the Maori membership of such bodies (Ballara 1998, 325, 336).

Definitions are, however, critical to “counting” processes. Statistics New Zealand, the Government’s national statistical office, has undertaken a close study of the statistical applicability of the structural-operational definition to organizations in the Aotearoa/New Zealand context (Statistics New Zealand 2005c). This examination is the initial stage of a significant project to collect statistical data for a “satellite account” on nonprofit organizations. Satellite accounts are recognized internationally as a way of presenting information in particular areas of interest not covered by conventional economic accounts. By extending the central national accounting framework, the satellite account will enable additional information on nonprofit organizations, both financial and non-financial, to be presented alongside standard economic measures such as Gross Domestic Product and household spending.

The Statistics New Zealand work has included development of “decision-trees” for each of the five structural-operational criteria. If an organization is to be “in scope” for the satellite account, it must be successfully tested against the questions posed in the decision-trees.<sup>33</sup> The discussion below explores both Statistics New Zealand work on the “decision-trees” and a consideration of issues that influence the applicability of each of the five criteria in the Aotearoa/New Zealand context.

## Organized

“Organized” means institutionalized to some extent. This can mean that an organization is either formally registered or that an unregistered entity shows proof of having regular meetings, rules of procedure, or some degree of organizational permanence.

The structural-operational definition adopts a very inclusive approach to organizational form and in so doing includes even relatively informal, loosely structured entities as long as they have some degree of permanence beyond individual members. Informal, loosely structured organizations represent some important aspects of the social history of this country. Informal associations and helping networks were a significant part of local community life that settlers brought with them from the United Kingdom. Kin and locality-based networks have always been a central part of Maori society and are also an integral part of Pacific people’s communities and of other migrant communities, as well. These informal networks continue to thrive and perform important social and interpersonal functions today. Acknowledging the nature, shape and roles of this type of activity is an important part of a full understanding of the nature of the nonprofit sector in this country. It is also important in terms of generating an accurate picture of matters, such as the nature and level of “voluntary” activity.

Locating loosely structured entities for counting purposes presents challenges, the most significant of which is identifying them in order to ensure that a comprehensive national picture is able to be produced. The definition does, however provide an inclusive framework at the theoretical level.

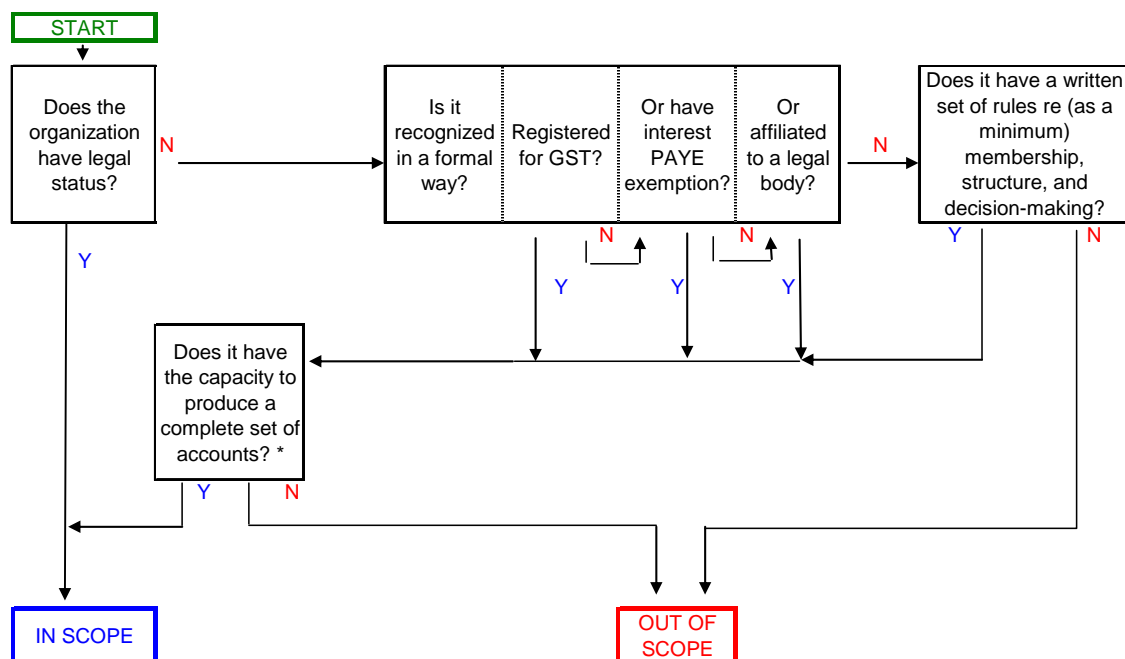
To determine whether an entity has a sufficient level of organization to be “in scope” for the satellite account, Statistics New Zealand (2005c, 8) uses the decision-tree shown in Figure 1. The final test in the decision tree is whether the entity has the *capacity* to produce a complete set of financial accounts. While some informal groups may be too difficult to identify for the satellite account, a large number of organizations that have not assumed a legal identity (through registration as an incorporated society, for example) maintain a bank account which gives them the capacity to produce annual accounts (even if they do not regularly do this).

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<sup>33</sup> A full discussion of the use of decision-trees can be found at:  
<http://www.stats.govt.nz/people/communities/non-profit-institutions/default.htm>.



Figure 1. Organized Criterion Decision-Tree



\* That is, can the entity put together Statements of Financial Position and Performance.

### Private (i.e., nongovernment)

“Private” in this context refers to being institutionally separate from the government, meaning they are neither part of the governmental apparatus, nor controlled by the government. This is also referred to as the “nongovernment” criterion.

As the nature of the relationship between government and the nonprofit sector changes, the term “private” can be ambiguous. While formal “institutional separation” is usually comparatively straight forward, the increasing use of various forms of contractual arrangements between government and sector organizations make the notion of “institutional separation” more porous. Historically, with some important exceptions, the state has been the major provider of health, education, and social services. This has changed in the last two decades with increasing service provision through nonprofit organizations under contract to the state. In some instances new nonprofit organizations have been formed as a direct result of government funding decisions. These changes continue to alter the nature of the government-nonprofit relationship.

The extent of government control through contract and related audit mechanisms has been argued to raise questions about the degree to which some nonprofits are in reality institutionally separate. The experience of many organizations is that while, in theory, they have the option of not accepting contracts with the state, many find that if they do not accept government funding they will not be able to continue their work and thus they accommodate increasing levels of state definition of their work through service contracts. On the other hand, “agency theory” (see, for example, Anderson and Dovey 2003; Cribb 2005) would argue that by virtue of their capacity to control information flows to the state, nonprofits do retain their institutional separateness and, in theory, their capacity to refuse to enter into contracts that impose onerous obligations upon them, reinforcing their autonomy. The tension

for nonprofits in Aotearoa/New Zealand is that, in many instances, there are limited alternative funding sources if government contracts are not accepted.

The complexity and difficulty of identifying clear separation is reflected, too, in organizational frameworks such as PHOs and kindergartens. These organizations are formally separate from government and have significant functional autonomy, but derive the bulk of their funding from government and play a central role in the achievement of government strategic direction. Most staff of kindergartens are employed by the state, and PHOs did not exist until government policy required they be established.

In some instances, organizations may even move between the state and nonprofit sectors over time. Children's Health Camps provide an interesting, hybrid example of this movement, having shifted from a closer alignment with the nonprofit sector in terms of administration and funding, to a situation where the balance went more towards the state on both fronts, followed by a more independent identity and administration in recent times (but with continued financial dependence).

Tangata whenua governance organizations provide an interesting opportunity to explore the nongovernmental criterion. In the CNP, organizations that are established through political processes such as those associated with the legislative, judicial, or executive branches of Government are defined as "out of scope." A range of institutions and entities that have delegated sovereign authority are consequently not included in the structural-operational definition as nonprofit organizations. Similarly, various entities established by territorial local authorities are defined as "out of scope." In other colonized countries such as the United States, tribal forms of government do exist and these entities have been designated as falling "out of scope" of the structural-operational definition. In the Aotearoa/New Zealand case, as discussed earlier in this paper, tangata whenua governance entities exert stewardship over the interests and affairs of iwi in perpetuity, and while many are mandated by the Crown, they do not have sovereign authority of a nature sufficient for them to be defined as part of government (Statistics New Zealand 2006, 71). The distinction drawn here is between "governance" and "government" in the operation of tribal authorities around the world. As Statistics New Zealand (*ibid*) notes in the Aotearoa/New Zealand context:

...mandated iwi organisations, while they have a recognised relationship with the Crown, also exist as organisations in their own right, serving their people. As such they are classified as NPIs in-scope for the satellite account.

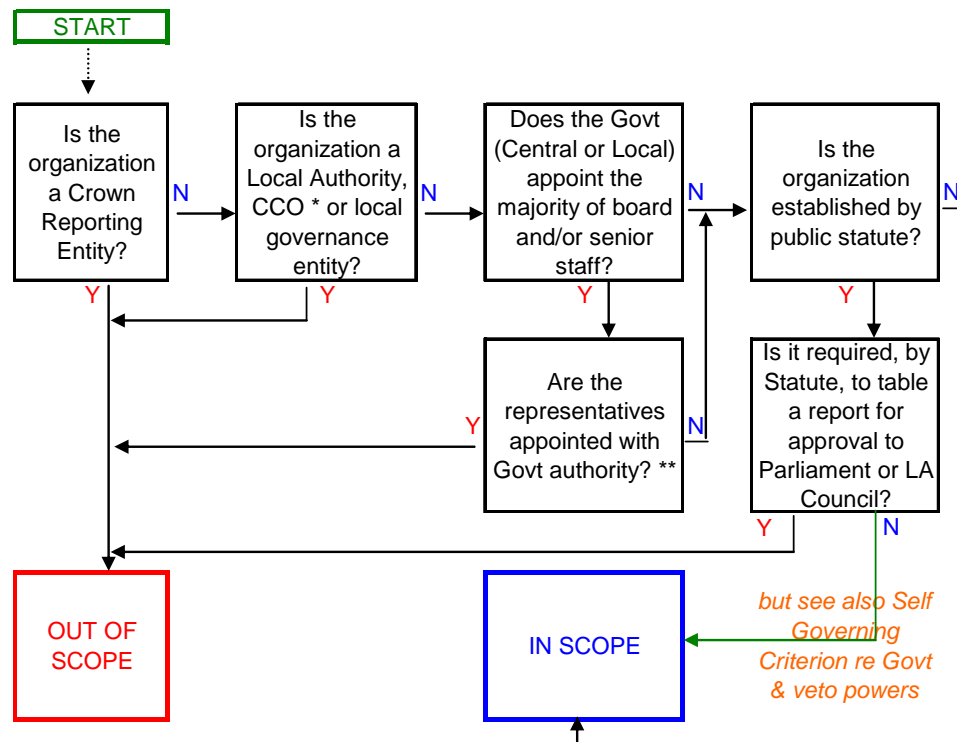
The "private" criterion proves to be a useful criterion for advancing our understanding of the nonprofit sector. Its application and interpretation is nuanced by the evolving nature of the relationship between the state sector and the nonprofit sector.

The Statistics New Zealand (2005c, 12) decision-tree shown in Figure 2 excludes organizations such as:

- Crown reporting entities (for example District Health Boards) are an institutional form of government and are therefore "out of scope" for the satellite account;
- Council-controlled organizations established under the Local Government Act 2002 are controlled financially and operationally by local government and are "out of scope;"
- Organizations where board members are appointed by the Crown and are required to report to Parliament. While predominantly "out of scope," there are grey areas. For

instance, the members of the Community Trusts (set up under statute to provide philanthropic funding in local communities) are appointed by government to act in their capacity as private citizens, not as policy representatives of the Minister (see further discussion of community trusts under the self-governing criterion below).

**Figure 2. Private Criterion Decision-Tree**



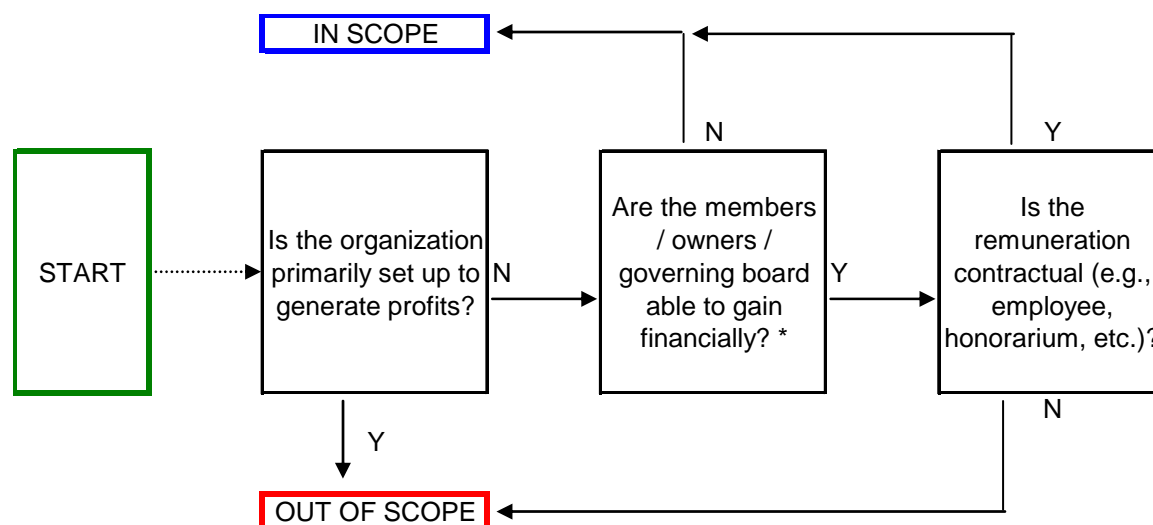
\* Council-controlled organization as defined under the Local Government Act 2002.

\*\* Otherwise they are appointed as private citizens.

## Non-Profit-Distributing

“Non-profit-distributing” means that any surplus generated by an organization may not be distributed to its owners, officers, or members; rather they are applied to tasks related to the organization’s mission.

There is a complexity around the notion of not returning profits to owners or directors. “Non-profit-distributing” in theory is relatively easy to identify, as most of the legal frameworks for organizations have non-profit-distributing as a key criterion. However, what legal frameworks, and consequently the statistical systems that use legal structures to identify relevant organizations, cannot differentiate is the adoption of nonprofit legal status for taxation or other pragmatic rather than altruistic reasons. This means that organizations can be created to gain taxation advantages and these cannot be distinguished from those that exist for genuine nonprofit purposes. The structural-operational definition has no way of identifying and excluding these organizations from the accounting process. It is possible for a trust to be created that legally satisfies the charitable status criteria and that does not distribute profits, but which instead, remunerates employees very well for their work. Such a trust would, however, be included in any formal definition of a “nonprofit” organization because of its legal personality. It is impossible to ascertain how widespread this practice is.

**Figure 3. Non-Profit-Distributing Criterion Decision-Tree**

*\* Notwithstanding contractual remuneration, any such income received by members, etc., will not be exempt income under the Income Tax Act.*

The Statistics New Zealand (2005c, 9) decision-tree shown in Figure 3 includes “in scope” organizations that pay members for their services. However, consistent with the United Nations Handbook on Nonprofit Institutions in the System of National Accounts (2003, 32), organizations such as credit unions and cooperatives, which are able to provide financial returns for members, are deemed “out of scope.”

### Self-Governing

“Self-governing” means equipped to control their own activities, that is, nonprofit organizations must have their own internal procedures for governance and must not be controlled by outside entities.

Self-governance is not always an absolute matter, which means that some organizations will be difficult to formally classify using this criterion. For instance, Statistics New Zealand (2005c, 12-13) notes that while being established by the state under statute, bodies can be constituted in such a way that they can, nevertheless, be considered self-governing, at least in a day-to-day sense, and have a degree of autonomy in relation to their overall direction. Furthermore, many larger and older nonprofit organizations, including most major churches, have been established under their own Act (e.g., the Royal New Zealand Foundation of the Blind Act). This means that while they control their own operational activities, they can only change their purpose or dissolve themselves with government permission.

Community Trusts are an example of organizations that sit at the boundary between the nonprofit and statutory sectors in terms of self-governance. They were established in the 1980s, following the privatization of the community-owned regional banks across the country. While these Trusts are constituted by statute and their members are appointed by government, the Trusts are responsible for their own activities, including allocation of grants,

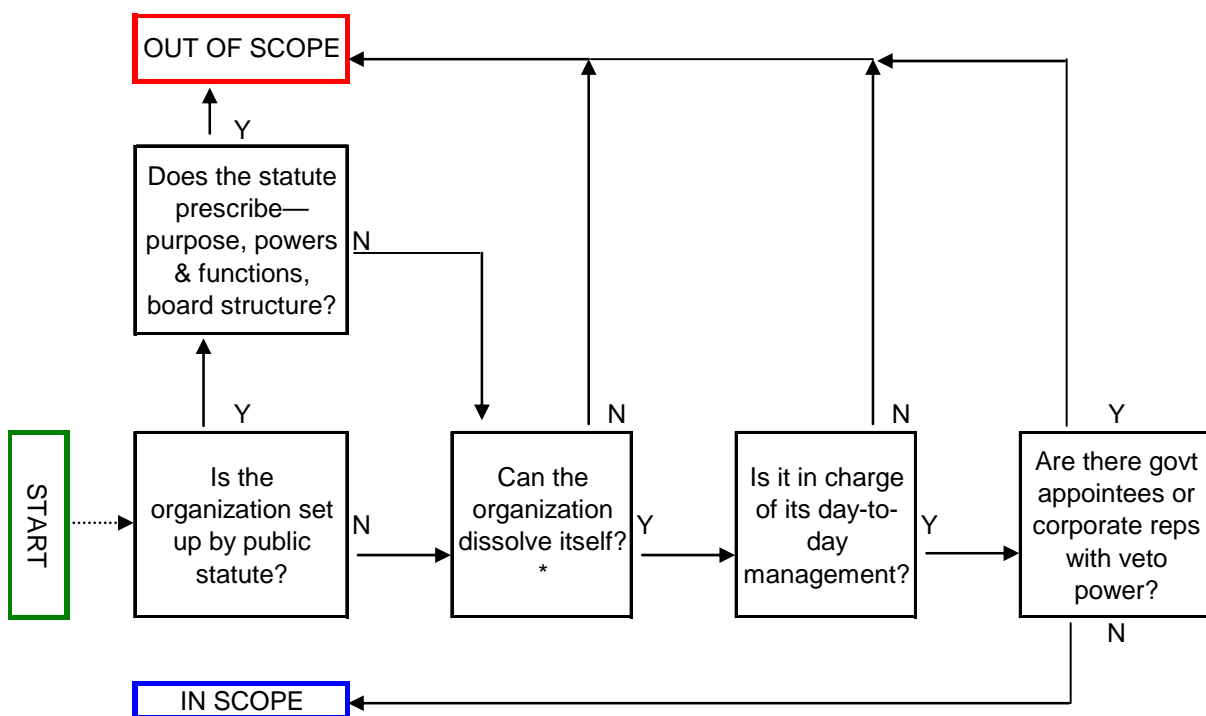
and the Trusts can initiate a change in their trust deed, even though the Minister of Finance makes the final decision on the content of these documents.

Organizations can also migrate over time between state control and self-governance and at different points in a nation's history some organizations will be considered in or out of the sector, but their core purposes may change little over time. Water Safety New Zealand Inc is an example. Initially called the Water Safety Council, it was part of a government department, but over time was separated out and provided with a government grant. The grant was then cut, and funding responsibility fell on the New Zealand Lottery Grants Board.

PHOs are an example of nonprofit organizations called into existence by the state. At this point in time, these are appropriately identified as part of the nonprofit sector because of their self-governing character. However, they are a key component of the state's primary health care strategy and are responsible for the disbursement of significant amounts of state funding of health services. Over time, the state's orientation to them as independent entities may well change. This change of orientation can occur irrespective of whether the organization's activities change.

These issues are encapsulated in the Statistics New Zealand decision-tree for the self-governing criterion (see Figure 4).

**Figure 4. Self-Governing Criterion Decision-Tree**



\* And, ipso facto, autonomously change its rules and/or purpose.

The decisive factor in assessing self-governance is whether an organization has the ability to change its purpose or to dissolve itself. If the statute creating these entities establishes mechanisms by which they can change their purposes without obtaining explicit approval of the parliament, then they would be considered part of the sector even if the organization's

purpose, powers, and functions were initially established through statute. Furthermore, the existence of some restrictions on organizations contemplating dissolution (e.g., that assets must be retained for charitable use or that care be taken to assure continuity of service for key recipients) does not negate self-governance.

### Non-Compulsory or Voluntary

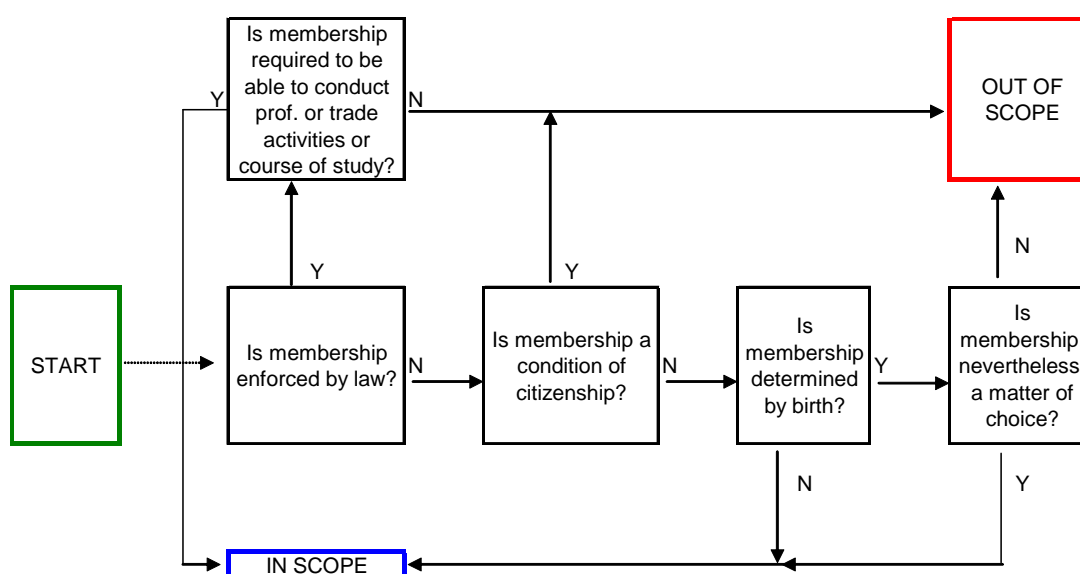
“Voluntary” here means that membership and contributions of time and money are not required or enforced by law or otherwise made a condition of citizenship or determined by birth. It is not to be confused with voluntary, in the sense of unremunerated. The term includes both those organizations where members are not remunerated, organizations where all members are remunerated, and other organizations where there is a combination of remunerated and non-remunerated members.

The meaning of voluntary activities can differ within and between cultures. For many Maori, Pacific, and ethnic minority peoples, the extended family forms the primary focus of social interaction and organizations may be formed within this sphere. Involvement in their communities is often a form of cultural obligation. In Statistics New Zealand’s decision-tree, organizations where membership derives from common ancestry, but is nonetheless freely chosen remain “in scope” for the satellite account.

A question of compulsion versus free will also arises in relation to some professional organizations where membership is required in order to practice a trade or profession. The United Nations Handbook on Nonprofit Institutions in the System of National Accounts (2003) allows these organizations to be “in scope” for the satellite account where the members have freely chosen to join their profession. This would similarly apply to compulsory student unions, where students have freely chosen to study.

The decision-tree shown in Figure 5 captures the essence of this discussion in delineating the criteria used to decide whether organizations are in or out of scope on the basis of their compulsory or voluntary nature.

**Figure 5. Non-Compulsory Criterion Decision-Tree**



The history of the nonprofit sector in Aotearoa/New Zealand suggests its huge variety and elaboration over time. Legal frameworks show complexity and a sometimes-contradictory accretion of forms. The five criteria that comprise the structural-operational definition offer a workable tool to enable the statistical measurement of the sector's nature, size, and organizational scope. While in any country there will be organizations on the classificatory margins, our discussion suggests that the margins themselves contribute to an understanding of national patterns and the place of Aotearoa/New Zealand in international studies of associational life.

## **Conclusion**

Diversity and constant, dynamic processes of change characterize the nonprofit sector in Aotearoa/New Zealand. The nonprofit sector is energetic, innovative and vocal, offering rich opportunities for citizen engagement. Indigenous organizations create a unique shape and character within the sector, bringing centuries-old kaupapa and contributions to both iwi and society more generally that have only recently received wider recognition. Iwi/Maori organizations are active in all fields of the sector and in addition to this, a range of organizations also provides stewardship over the affairs of iwi in perpetuity. While iwi/Maori organizations generally draw on both Maori kaupapa and Anglo-Saxon traditions, it is these tangata whenua governance organizations that bring a distinctive Aotearoa/New Zealand flavor to this project, sharpening our focus on those things that are different in international settings, as well as those that are readily able to translate from one context to another.

In such a small country, the particular closeness of relations between the nonprofit and state sectors creates both challenges and opportunities. There is a tradition of dialogue and the nonprofit sector has not been backward in taking a stand on critical issues facing vulnerable populations, the country as a whole, and sectoral groups. At the same time, many parts of it, most especially those delivering social services, have become significantly dependent on state funding. Tensions have increased along with this dependency.

The state, particularly in the past three decades, has found a willing reservoir of energy and structure through which it has been able to pursue some of its key goals by purchasing services and expertise directly from the sector. The experience since the state sector reforms of the 1980s and the transformation of state support for the sector from grants-in-aid that assisted organizations to achieve their own ends to contracts purchasing services on the state's behalf reflect a significant shift in the way in which the state understands the sector. The sector reflects and represents diverse citizen interests and these are not always consonant with the interests and needs of the state. As the state increasingly contracts with sector organizations to deliver services, tension between government interests and those of the sector become more apparent. While the current discourse is of partnership, it is clear that further work needs to be done to achieve relationships based on mutual understanding and respect.

We hope this report has provided new and useful insights into the New Zealand nonprofit sector. With the data being collected by Statistics New Zealand on the size, structure, and financing of Aotearoa/New Zealand's nonprofit organizations, we hope to shed new light on the contributions these organizations make and the potential they hold to address many of the challenges New Zealand faces in the 21<sup>st</sup> century.

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**Project Director:** *Lester M. Salamon*  
**Senior Research Associate:** *S. Wojciech Sokolowski*  
**Project Coordinator:** *Eileen M. H. Hairel*  
**Communications Associate:** *Mimi Bilzor*

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