THE NEW ZEALAND NON-PROFIT SECTOR AND GOVERNMENT POLICY

By Mike O'Brien, Jackie Sanders and Margaret Tennant

A review of the policy relationship between government and the non-profit sector, undertaken as part of the Study of the New Zealand Non-profit Sector

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Table of contents

Executive summary

This review of the policy relationship between government and the non-profit sector is the final piece of work for the New Zealand contribution to the Johns Hopkins University international study of the non-profit sector. The project overall has produced extensive qualitative and quantitative information on the non-profit sector and an overview report, *The New Zealand Non-profit Sector in Comparative Perspective*.

The relationship between the non-profit sector and government can be characterised as constantly evolving and changing, those changes being substantial on some occasions and more subtle and nuanced at other times.

The public sector reforms of the 1980s and 1990s had a significant effect on the relationship between government agencies and the sector, and saw an increase in funding to the sector. Historically, government grants supported organisations to pursue their own aims, but the shift to contracting has meant a closer relationship between government and the sector.

The approaches to contracting have raised questions about the extent to which non-profit organisations are meeting government goals rather than pursuing their own missions. Sector independence and effective engagement between the sector and government remain critical issues, with both government and the sector continuing to explore ways to build effective working relationships. Issues of compliance and risk aversion, shaped by both contracting and legal requirements, are an important influence on this aspect of the relationship.

For government, contracts ensure accountability, especially financially, and have created opportunities for government to support a more diverse range of service providers. For the non-profit sector, it is often seen as shaping organisational activities, creating significant compliance requirements and limiting independence and autonomy.

In the past decade, there have been moves to build stronger and healthier relationships between government and the sector. The appointment of a Minister with specific responsibility for the sector (1999), creation of the Office for the Community and Voluntary Sector (2003), and the Statement of Government Intentions for an Improved Community-Government Relationship (SOGI) in 2001, illustrated movement towards closer relationships. A range of other initiatives followed, such as increased tax relief for contributions to non-profit organisations.

Drawing on the SOGI framework, a number of government agencies have established national-level mechanisms for building and developing relationships with non-profit organisations in their respective sectors. Health, housing, sport and recreation, international aid and development and services for children and families provide examples.

The nature of these relationships varies, with most government agencies outside Wellington interviewed for this project appearing to know little about the SOGI framework. A recent review of the SOGI by the Association of Non-Government Organisations of Aotearoa calls for the Government to note the value of such a statement, to formalise the way it is implemented by government agencies, and to regularly evaluate progress in government's responsiveness.

At a local government level (local authorities and district health boards), there is also considerable variation in the relationships with the non-profit sector.

Understanding the nature of the relationship between iwi/Māori organisations and government was an important part of this project. The Treaty of Waitangi gives iwi/Māori a direct relationship, rather than a relationship that is mediated through their status as independent organisations.

Moreover, Māori view their accountability to iwi as being as important as their relationship with the Crown. The study identified differences among Māori concerning the nature of their relationships with government. Active work on building and developing these relationships has been important in recent years, with the result that closer attention now appears to be paid in New Zealand to issues of diversity than is observed in other Anglo-Saxon countries that participated in the Johns Hopkins University international comparative project.

Umbrella groups – important organisations within the non-profit sector infrastructure – vary considerably in resources and capacity to actively influence the policy process and engage in advocacy work. These organisations report adopting a range of strategies when engaging in policy processes. The document identifies a number of examples of successful policy engagement by both umbrella groups and sector organisations more generally.

Non-profits also drew a distinction between being able to influence policy development from the outset, which they saw as highly desirable, from being engaged at the end of the development process to help develop implementation strategies. Historically and internationally, advocacy is a central role of many non-profit organisations. Performing this role can create tensions between non-profit organisations and government, particularly when non-profits receive a large proportion of their funding from the state.

Non-profit organisations take a range of legal forms, depending on their purpose and structure. Legislative oversight occurs through a range of statutes and there is a range of legislation specifically relating to Māori organisations and entities. In addition to legislation directly shaping the sector's organisational forms, non-profit organisations are also significantly affected by government legislation in areas such as employment, health and safety requirements, Treaty of Waitangi obligations and professional licensing. Most recently, the Charities Commission has been established to regulate those non-profits that operate as charities.

Government and the non-profit sector have a longstanding and constantly evolving relationship. Issues of independence, accountability, contracting, Māori/Crown relations, and capacity within the sector are at the centre of current relationships as that relationship develops in the early 21st century.

Introduction

This paper examines the relationship between the non-profit sector and government and the public policy environment in which the sector operates in New Zealand. In particular, it explores the impact of government policy on the sector and how current issues facing the sector are linked to interactions with government.

This work has been undertaken as part of New Zealand's contribution to the Johns Hopkins University international study of the non-profit sector. Previous publications relating to this study are:

- a definitions working paper (*Defining the Non-profit Sector: New Zealand)*
- an historical review (*The History of the Non-profit Sector in New Zealand*)
- the development of quantitative data on the sector (*Non-profit Institutions Satellite Account*)
- a bibliography (*A Non-profit Sector Bibliography)*
- an international comparative analysis of the non-profit sector (*The New Zealand Non-profit Sector in Comparative Perspective*).

All these papers are available on the website of the Office of the Community and Voluntary Sector and www.communityresearch.org.nz[1].

The state's relationship with the non-profit sector is mutable, nuanced and complex. Historically, some government agencies have had more comfortable relationships with the sector than others (Tennant et al 2006), while Nolan (2000, 301) has argued that "the state is a conflicting ensemble of institutions rather than a monolith". This report represents one of the first attempts to analyse recent developments across the whole sector.

Appendix A outlines the methodology for this work, which has been undertaken in accordance with Field Guide 7 of the Johns Hopkins University Comparative Non-profit Sector Project.

Overall policy framework

Non-profit organisations are affected by laws and regulations that determine their legal forms, tax treatment, and the ways in which they can act. Government agencies' operational policies, particularly in relation to the manner and extent of funding for non-profits, also have a major impact.

Legal frameworks

Unincorporated organisations

Non-profit organisations are not obliged to seek formal legal status. Unincorporated organisations still face a number of restrictions or limitations on their activities because they are subject to the application of common law principles. Their members may be treated as jointly and severally liable (in an unlimited way). Generally the law treats a legal action taken by a named unincorporated group as an action taken by each of its members, but some laws may deal with the organisation in its own name.

All members may be required to sign documents dealing with assets, otherwise contracts signed on behalf of the group have uncertain legal validity. Ownership of property vests in the individuals not the organisation. Where there are disputes or winding up action is taken, the courts may be the only route to ascertain the legal rules that apply (von Dadelszon 2002, 14-15). Unincorporated bodies may also be limited in their ability to receive any external funding (whether from government or not). However, such bodies can seek tax exemption for their income if registered with the Charities Commission – where a legal personality is not essential. About 61 per

[1] www.govt.ocvs.nz

cent of New Zealand's 97,000 non-profit organisations are estimated to be unincorporated (Statistics New Zealand, 2007).

Incorporated organisations

Non-profit organisations can acquire a legal personality in a number of different ways. These allow for 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 organisations to "flat" collectives. The oldest of these provisions has been available for more than a century. Legal registration of some sort is usually required in order to receive funds from the state and many philanthropic funders.

Membership-based organisations frequently incorporate under the Incorporated Societies Act 1908. Charitable societies often incorporate under the Charitable Trusts Act 1957 while trading operations with a charitable purpose often incorporate under the Companies Act. The Registrar of Incorporated Societies, administered by the Ministry of Economic Development, determines whether or not an organisation will be registered as an incorporated society.

About 15 per cent of New Zealand's 97,000 non-profit organisations are incorporated as Charitable Trusts and 22 per cent as Incorporated Societies[2]. Though much less commonly used, it is also possible to be incorporated under the Friendly Societies and Credit Unions Act 1982, and for co-operatives under the Industrial and Provident Societies Act 1908.

There are also a number of religious and other organisations that are incorporated by their own empowering legislation, for example the Anglican Church Trusts Act 1981, Roman Catholic Bishops Empowering Act 1997, Royal New Zealand Foundation of the Blind Act 2002, and Te Whanau-a-Taupara Trust Empowering Act 2003. Some Māori tribal entities are recognised or incorporated under Treaty settlement legislation, for example Te Runanga o Ngati Ruanui Trust in the Ngati Ruanui Claims Settlement Act 2000 (Tennant et al 2006, p16-24).

Each of these forms of incorporation has its own, slightly different, requirements for rules, membership and other aspects of operation. There are also different reporting requirements required by the legislation that the organisation is incorporated under. While generally this regulation might be considered light handed, it can still be onerous and confusing for small organisations, which may not spend resources on professional taxation or legal advice. About 90 per cent of non-profit organisations in this country employ no staff and are thus exclusively reliant on volunteers to run them and ensure legal compliance.

Charities

Non-profit organisations may generally have any purpose they choose providing it is lawful. Many[3] choose to keep within the public benefit criterion contained within statutory definitions and case law on the meaning of charitable purpose, because:

- a trust with an exclusively charitable purpose may have a perpetual life and need not have identifiable beneficiaries

[2] Tennant et al 2006 estimated the existence of 15,000 charitable trusts and 21,500 Incorporated Societies for October 2005. The percentages above are based on the denominator being the 97,000 non-profit organisations estimated by Statistics New Zealand (2007) for October 2005.

[3] Approximately a quarter of non-profits have registered with the Charities Commission.

- an organisation with an exclusively charitable purpose will, subject to certain territorial and anti-avoidance rules, be exempt from income tax and gift duty
- donors to charitable organisations may be able to claim tax concessions for donations if the charity is also accepted as a donee organisation by Inland Revenue.

Accrued over four centuries, the case law on charitable purpose is complex. For those non-profit organisations that choose to claim charitable status, there are the common law tests of what constitutes a charity and a charitable purpose. Most public good activities are recognised but some key points are:

- the purpose must relate to relief of poverty, the advancement of education or religion, or any other matter beneficial to the community
- the promotion of political change is excluded
- the purposes must be exclusively charitable
- the organisation may carry on business provided the purposes are charitable.

The Charities Act 2005 provides for the Charities Commission to register charitable entities. This registration process has become the "front door" for organisations that wish to be eligible for tax and gift duty exemptions available to charities under tax legislation. Registration under the Charities Act does not replace the option for a group to separately incorporate, for example under the Incorporated Societies or Charitable Trusts Acts, as discussed above. Fundraisers (and fundraising) are not subject to any specific regulatory framework.

The Charities Act continues the previous approach adopted by Inland Revenue in assessing what organisation can be accepted as charitable for tax benefits. The new legislation provides the most stringent test of purpose[4] while strengthening the enforcement of the existing exemptions and providing a basis for policy review of their scope.

The recognition that an organisation is charitable under other legislation, such as the Charitable Trusts Act (1957), does not mean that an organisation will be considered charitable by the Charities Commission. Acceptance of registration by the Charities Commission is now the trigger for recognition of charitable status by Inland Revenue. However, Inland Revenue retains the ultimate decision concerning tax exempt status. Non-profit organisations registered with the Charities Commission are required to submit an annual return that must include a copy of the organisation's financial accounts and include a statement of its financial performance.

Māori legal structures and related issues

Currently there is no general law providing for representative organisations for iwi, though the Waka Umanga (Maori Corporations Bill), introduced by the 2005 Labour-led Government proposed establishment of new legal entities by tribal groups or Māori associations (Parliamentary Library Bills Digest No1700). Māori non-profit organisations may be unincorporated or incorporated under any of the forms discussed above.

However, there are also some Māori-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

[4] www.charities.govt.nz/guidance/charitable_purpose.html

1920s to the present “a bewildering array of tribal boards have been constituted by separate statutes” (Law Commission 2006, p37). The Runanga Iwi Act 1990 was “an attempt to provide a general legal framework for tribes but was repealed in 1991.” (Tennant et al 2006, p20).

From the 1920s, many Māori trust boards were established, the first being the Arawa Māori Trust Board set up under the Māori Land Amendment and Māori Claims Adjustment Act 1922. In 1955, the Māori Trust Boards Act was passed bringing 10 boards within its ambit. Under the 1955 Act these boards may at any time establish trusts for charitable purposes (s24B). A number have recently done so to further fisheries settlements under the Māori Fisheries Act 2004. Māori trust boards under the 1955 Act, however, are subject to controls by the Minister of Māori Affairs. They are ultimately accountable not to iwi but to the Minister.

In addition, separate Acts provide for a number of non-profit Māori organisations, such as Te Runanga o Ngai Tahu Act 1996. These Acts provide modern governance entities to manage tribal assets, including assets from recent Treaty claim settlements such as the settlement concluded under the Ngai Tahu Claims Settlement Act 1998. Te Runanga o Ngai Tahu Act 1996 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.

Five different types of trusts may be constituted under Te Ture Whenua Māori Land Act 1993/Māori Land Act 1993 (alternatively titled the Māori Land Act 1993), putea trusts, whanau trusts the most common, ahu whenua trusts, whenua topu trusts and kai tiaki trusts. While each has different purposes and rules, the primary goal of these trusts is to retain Māori land in Māori ownership. These trusts are generally established for the benefit of owners of Māori land or their iwi and hapu. As they may make and distribute profits, such organisations would generally be outside the scope of the Johns Hopkins University Comparative Study definition of the non-profit sector. They are all registered with the Māori Land Court.

Before changes to the income tax legislation in 2002, charitable work that benefitted only people related to one another had been held by the courts to fail the public benefit test. This was a particular problem for non-profit organisations for Māori communal purposes. For example, in Arawa Māori Trust Board versus Commissioner of Inland Revenue (1961) 10 MCD 391, it was ruled that a trust established by the Arawa Māori Trust Board under the Māori Trust Boards Act 1955 was not charitable in part because it was for the benefit of a group of persons determined by their bloodline, or whakapapa.

However, in Latimer versus Commissioner of Inland Revenue [2002] NZCA 121 (June 4, 2002), the Court of Appeal, dealing with a trust which funded tribal groups to research historical claims, noted that:

> … the common descent of claimant groups is a relationship poles away from the kind of connection which the House of Lords must have been thinking of in the Oppenheim case when it said that no class of beneficiaries could constitute a section of the public for the purpose of the law of charity if the distinguishing quality which linked them together was a relationship to a particular individual either through common descent or through common employment. There is no indication that the House of Lords had in its contemplation tribal or clan groups of ancient origin. Indeed, it is more likely that the Law Lords had in mind the paradigmatic English approach to family relations. Lord Normandy exemplified this approach in his observation that

> "there is no public element in the relationship of parent and child" (p310). Such an approach might be thought insufficiently responsive to values emanating from outside the mainstream of the English common law, in particular as a response to the Māori view of the importance of whakapapa and whānau to identity, social organisation and spirituality (par 38).

Recognising this dilemma, the Charities Act 2005 continues the amendments first included in the Income Tax Act, and now specifically provides at section 5 (2) that:

- the purpose of a trust, society, or institution is a charitable purpose under this Act if the purpose would satisfy the public benefit requirement, apart from the fact that the beneficiaries of the trust, or the members of the society or institution, are related by blood
- a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Māori reservation referred to in Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) and the funds of the marae are not used for a purpose other than:
  - the administration and maintenance of the land and of the physical structure of the marae
  - a purpose that is a charitable purpose other than under this paragraph.

Section 5 (3) and (4) also clarifies that ancillary purposes (for example, advocacy) that are not charitable do not prevent registration as a charitable entity so long as they are not an independent purpose of the entity.

Other legislative regulation

Wider changes in legislation also have an impact upon the ways in which non-profit organisations can act. Government and philanthropic funding bodies often require non-profit organisations to meet certain criteria and adhere to legislation in order to be eligible for funding. This brings workload implications that can be particularly onerous for organisations that fully, or to a significant extent, rely on volunteer labour. Furthermore, even those organisations that do not draw upon government funding are also required to comply with a range of legislation and this can mean increased workloads in order to ensure compliance.

For instance, the Health and Safety in Employment Amendment Act 1992, particularly since its amendment in 2003, has had an impact on the way in which non-profit organisations operate when they employ staff and involve volunteers, and when members of the public enter their premises, participate in events or have other contact with them while they are undertaking activities. Under this legislation non-profit organisations have the same responsibilities and liabilities as private companies and state sector organisations to ensure the safety of staff and others who use their premises or attend events which they have organised. They are required to take all practical steps (such as to have health and safety management plans) to ensure safety of staff, volunteers and members of the public. The liability of non-profit organisations differs depending upon whether or not they employ staff. Those that rely solely upon volunteer input are required to exercise a general duty of care (breaches being non-enforceable). Those that have paid staff with or without volunteer input have enforceable duties of the same nature as any other employer in terms of ensuring a safe, hazard-free environment.

Organisations must also comply with the Privacy Act 1993 (and subsequent Privacy Amendment Act 1994), which requires organisations to nominate a privacy officer. The Employment Relations Act 2000 applies to all organisations that employ staff

and in many cases require organisations to have access to expertise to oversee human resource issues.

The Health Practitioner Competency Assurance Act 2004 brings new requirements for organisations operating in the health sector. While important in terms of protecting the public from incompetent health practitioners, in practice this aim can exclude many of the volunteers who work in the non-profit sector for organisations (for instance, in hospices) as they are unable to meet the required training and practice hours needed to be registered under the Act. Registered nurses can no longer volunteer as registered nurses unless they fulfil these criteria and without the financial support of an organisation they are unable to meet these without incurring significant personal financial cost.

In addition, organisations that draw on state funds may be required to demonstrate that they fulfil Crown obligations to the Treaty of Waitangi; that they have demonstrated a commitment to government policies in the area they are working and support government philosophies (which change periodically). Non-profit organisations that receive state funding, even relatively small and intermittent amounts, may be required to have written policies and to provide evidence of adherence to these policies. While large non-profit organisations are able to meet these requirements, smaller organisations with only one or two paid staff members find meeting all of these requirements a significant challenge. Given the increasing level of compliance flowing from these legislative and contractual obligations many non-profit organisations are questioning whether it is time to start paying board members due to the increasing role and responsibilities required of them, but struggle with this as it seems contrary to the voluntary ethos of the sector and it also represents an additional drain on their resources. Small organisations often do not have the knowledge and expertise to meet all the criteria required of them.

The report from the Office of the Minister for the Community and Voluntary Sector to the Cabinet Social Development Committee in 2002 identified four legislative areas with significant implications for volunteering (Minister for the Community and Voluntary Sector 2002). The Government's response to the issues raised in this report are summarised in *Government Support for Volunteering 2002-2008* (Office for the Community and Voluntary Sector 2008) and include legislative and policy changes, research and promotion of volunteering.

Historically, legislation regulating the sector was limited and relatively flexible. As indicated, a key feature of the recent past has been a marked increase in legislative requirements, with implications for the viability of many organisations, and for their volunteer base. There has been little scholarly attention to the regulatory environment for non-profit organisations in New Zealand, and Mitchell (1993, 45) observed that even though some of the organisational forms which are prevalent in the sector "look more and more archaic".

Tax exemption

Tennant et al (2006) outline a number of the tax issues that affect government transfers and policies relating to non-profit income. These are summarised below.

Organisations may seek exemption from paying income tax and gifts to them can be exempt from duty under the provisions of various tax Acts, if:

- they are registered as a charity under the Charities Act 2005
- sport organisations, 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 qualify for special exemptions from paying income tax

- education centres bound by the Education Act 1989 such as schools are also exempt from income tax.

Under the Taxation (Māori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2003, a number of specific entities are eligible for a concessional income tax rate of 19.5 per cent.

Organisations not exempted through the above means, and not set up for the personal benefit of any group or individual, may qualify for an alternative tax exemption on the first $1000 of income. Currently, the only rebates or other tax off-sets for volunteers working in non-profit organisations, including charities, apply to student loan recipients who volunteer for overseas-based named charitable organisations. In this situation, individuals are able to retain an interest-free student loan for up to two years.

Some consider any potentially forgone revenue, for example favourable tax treatment of charitable and other non-profit organisations, to be a “tax expenditure” of Government. Though reliable data on “tax expenditures” are not generally available, this could also be considered a significant area of government support for the sector, and not without its impact on non-profit organisations and how they operate. For example, if government support for the sector was predominantly in this form, it could be expected to favour organisations most able to raise funds from the public or other private sources.

These may be more likely to be “household name” and popular charities rather than, say, organisations assisting or representing the interests of marginalised or less popular groups in society. It may also favour the causes supported by wealthier donors (for example, some research suggests that wealthier donors are more likely to support education and the arts, compared to lower income donors who are more likely to support social services). On the other hand, the use of tax concessions and rebates enables donors to individually “vote with their dollars”.

In the 2007 Budget, rebates on donations to charitable organisations were altered to have effect from April 2008 so that donors could claim a 33.3 per cent tax rebate for all donations to eligible organisations up to the level of their annual income. This was a significant lifting of what had been, by international standards, very low limits on tax deductible donations. It effectively moved New Zealand from one of the least generous rates of tax support among OECD countries to one of the highest levels of support. The 5 per cent deduction limit from companies and Māori authorities was also removed, effective from 1 April, 2008. Further work in 2009 is clarifying taxation of volunteer expenses and introducing a voluntary payroll giving system for charitable donations. There is also a review of the inability of charitable organisations to benefit from imputation credits system.

Māori authorities

Under section DV 12 of the Income Tax Act 2007, Māori authorities are entitled to deduct donations to donee organisations and to Māori associations, in the same way companies do. The deduction was extended to apply to donations to donee organisations from the 2002-2003 income year. Previously, the deduction was limited to donations made by Māori authorities to Māori associations (Inland Revenue 2006, 13).

Funding from government

Government support of non-profit sector organisations has a long history, involving a range of different forms of support (Tennant, 2007). Historically, government funding for non-profit activity was less formal and the small size of the country facilitated more fluid types of arrangements. Since the 1980s funding transfers have increased dramatically and arrangements have become progressively more formal. The contract now is the preferred mechanism for managing funding transfers from the state to sector organisations. Some programmes retain conditional grants for community-based programmes in which the work is more difficult to specify ahead of time and require a degree of flexibility in delivery for the provider. The Ministry of Social Development-led Strategies for Kids Information for Parents (SKIP) is one such programme, providing grants of up to $70,000 for 12 months.

Financial transfers to the non-profit sector increased markedly from the 1960s and this level of transfer accelerated from the 1980s. In 1967 some $3.9 million went from central government departments to voluntary social service organisations. In 1986 a conservative estimate put government funding for the voluntary welfare sector at $75.6 million (Driver and Robinson 1986, 10). By 2002 transfers from central government to non-profit organisations more generally were estimated at $920.6 million, with a further $91.3 million from Lottery Grants Board (Robinson and Hanley 2002, 10).

The most recent and most comprehensive, albeit still conservative, estimate of government funding of non-profit activity suggests it accounts for around 25 per cent of their total revenues, or equating to at least $2 billion in 2004 (Sanders et al 2008).

As both the size and the awareness of government support for non-profit organisations have increased in recent years, it has had a major impact on the government-sector relationship. This is discussed in detail in the following sections.

Key periods in the development of the government-sector relationship

Baxter (2002) divides the development of the government's approach to working with the non-profit sector into four phases - before 1980, 1980 to mid-1990, late 1990s and the current era (Baxter 2002).

State sector reforms pre-2000

Before 1980

Government funding for sector organisations before the 1980s was delivered through grants-in-aid and by the provision of other resources such as key personnel and equipment for specific initiatives or organisations (Tennant et al 2006, 9-11). Personal connections and informality were significant characteristics of the relationship during this period. Though in receipt of government grants, non-profit organisations were able to prioritise and pursue their own agendas and purposes. During this period non-profit organisations were often given government grants to meet government goals. For example, the Prisoner's Aid and Rehabilitation Society and the Marriage Guidance organisation were both directly funded to undertake work specified by government and many of these organisations explicitly recognised this interdependence. In the early 20th century, the Society for the Protection of Women

and Children even included a section in its annual reports that identified its "value to the state" (Tennant et al 2008).

1980s to mid-1990s

During the mid-1980s the environment began to change. As a part of the state sector reforms, contracting was introduced as the preferred mechanism for government to fund third parties generally, and non-profit organisations in particular. This was particularly so in the health and social services sectors, though contracts increasingly featured as the primary mechanism for transferring state funds to non-profits across the spectrum from the end of the 1980s. This phase was characterised by neo-liberal theories that drew on rationalist principles (Sam and Jackson 2004, 211pp), agency theory and managerialism (Walker 2004b).

This was a period of rapid and dramatic social, political and economic reform. Increasingly, government support moved towards those organisations undertaking specified services on behalf of government to achieve government objectives. Smith (nd, 1) notes "the new relationship which gives Government considerably greater control of that voluntary sector activity which it funds". A review of the literature on social service volunteering (Wilson et al 2001, 132) argues that government funding redefined the nature of the relationship between the state and non-profit organisations:

> Government has moved from investment in voluntary organisations to purchase of core government services, with voluntary organisations becoming alternative rather than complementary service providers.

The 1990s were characterised by deterioration in the nature of the relationship between the government sector and non-profits. During this time debates occurred about the nature and role of sector organisations - was their primary purpose to be a vehicle for the achievement of government policy objectives or did they also have an independent role that they defined? Was there accountability of sector organisations to Government, to the wider public (however defined), to clients or to donors and other supporters? Was it right that government agencies should specify the priorities of organisations from which it purchased services, rather than supporting their causes of origin?

These questions continue to be important as indicated by numerous government documents and reviews that look for the development of non-profit services which will meet government goals (see, for example, Ministry of Social Development, Department of Child Youth and Family Services, Treasury 2003).

Late 1990s

The relationship began to change as the 1990s drew to a close. These changes had an international and local flavour. For example, in the United Kingdom the Blair Labour Government's Third Way and Compacts with the sector (primarily in the social services field), and in Canada the development of an Accord with the sector provided conceptual frameworks which were used to inform a reappraisal of the sector's relationship with the state. The *Civil Society in the New Millennium* project[5] was another initiative with an international flavour that focused attention on the non-profit sector during this time. The first Australia-New Zealand Third Sector Conference was also held in this period reflecting a growing academic interest in the sector.

[5] *Civil Society in the New Millennium* was a United Nations initiative to highlight the role of volunteers and of civil society in the 21st century.

The state sector reforms of the 1980s presented a challenge to non-profit organisations not just in managing a delivery response, but also in working through their relationship with the state and dealing with a potential loss of identity and independence (Baxter 2002, 2). In the early part of this period an increasing focus of social sector non-profit organisations had been on client advocacy, raising in the public domain issues of poverty and social justice emanating from the state sector reforms. Sector discussions began to emphasise talk of partnerships and draw attention to the impact of the state sector reforms on the capacity of sector organisations to achieve their own goals. Treaty issues also begin to appear with some regularity during this time (see, for example, New Zealand Council of Christian Social Services 1998; New Zealand Federation of Voluntary Welfare Organisations 1998, 1999).

By the end of the century, there were indications that the then National-led Government was beginning to see the importance of improving its relationship with the non-profit sector and that senior ministers were beginning to question the emphasis on economic rationality. For instance, Prime Minister Jim Bolger delivered a series of speeches at National Party conferences during 1997 that indicated his desire to develop the social capital of the nation and initiated the Statistics New Zealand/Institute of Policy Studies work programme on social capital (Bolger 1998, English 2002, Robinson 1999). Work began in government to look at the sector and the state-sector relationship. For example, early work was undertaken by the Department of Internal Affairs to build an understanding of the voluntary sector as a whole (Suggate 1995). Government began to place greater emphasis on ways in which "community-government partnerships… help create social capital and social cohesion" (Ministry of Social Policy 2000, 7), a shift that was to consolidate from 1999 onwards under a Labour-led Government.

Two primary orientations to the state's relationship with the sector can now be detected in government documents:

- recognition that non-profit organisations play an important role in civil society and need to be supported and encouraged. The state has a role to play here supporting and resourcing the sector's independent operation
- a pragmatic interest in the sector because it has potential to further the Government's own policy agendas and interests.

The current era

Since early 2000, attention within government has focused on developing its relationship with the sector and a significant amount of work now exists across government agencies directed at this issue. Baxter (2002) noted several strands in government work concerning its relationship with the sector, each targeting a particular outstanding issue identified in work since the late 1990s:

> **Relationship building needs partners able to contribute effectively**
> There is hope of greater government confidence in the sector. However, this remains fragile and the sector still faces significant capacity and resource issues particularly in relation to the resourcing and support of umbrella, national and strategic groups. Officials have heavy workloads, leaving little time to work on system changes or building collaborative relationships.

Relationship building needs leadership
The development of a body in the sector that can sign up to a formal relationship with the Government remains elusive. Alternative approaches are to be considered, including a regular non-government organisation (NGO) forum that has looser accountability mechanisms. This would allow direct links to be established with relevant Ministers, politicians and senior government officials. This might provide a process for raising the political profile of the sector and a vehicle for considering issues of generic interest across the community sector.

Relationship building needs time and resources
Both sector and government officials express frustration at expectations that major changes can be achieved quickly. The goal of relationship building and repair has often faced unrealistically short time-frames.

Relationship building needs ongoing political commitment
The Statement of Government Intentions for an Improved Community-Government Relationship (2001) is a significant achievement that gained high-level political support. However, an ongoing formal political commitment (such as achieved in the United Kingdom and Canada) remains elusive (Baxter 2002, 13-15).

Capacity building
Over the last five years, successive governments have signalled a commitment to address two decades of difficulty in relationships with the non-profit sector. For instance, there is evidence of the state seeking to work collaboratively in areas such as capacity building and capability development. These developments include projects in the information and computer technology area, the development of a range of guides/resources for non-profits and the development of policies concerning volunteering (Ministry of Social Development 2002, Family and Community Services and the Office for the Community and Voluntary Sector 2005, 3).

Throughout the research for this project, a diversity of views and experiences concerning the nature of the relationship between the state and the sector was evident. Some research participants commented that the new resources and recognition have been welcomed by non-profit organisations. On the other hand, other non-profit personnel interviewed in this project suggested that government agencies' focus on capability and capacity building had taken on a paternalistic flavour, and they indicated a desire to be supported to build capacity themselves (with appropriate safeguards). However, an official commenting on this memorandum noted the paradox that this raised - government funding the development of an independent sector could be seen as a contradiction in terms.

Partnership
Partnership and collaborative models imply an equality of status, if not resources, that may be difficult to achieve in practice where one party is the state. Moreover, some parts of the sector have been concerned that non-profits have become focused more on meeting government goals and less on independently meeting and responding to community needs. There is a tension between the imperative to ensure accountability for the use of public money and the desire to develop a partnership style of relationships with a strong and independent sector (James 2001).

The recognition of the need for change has seen a softening of the language used to describe the sector and the state's relationship with it (Walker 2004b). For instance, Matheson et al (2005, 3) notes that since 1999:

> The landscape of Government-community relationships has… significantly changed. The arms-length, outputs-focused, prescriptive contracting environment of the 1990s has been replaced, in many policy areas, by the rhetoric of partnership as a means of delivering social goals.

There is recognition that the relationship between the state and non-profits will not always be easy and that there are different interests and agendas. Creating partnership-based relationships brings challenges for both parties (Controller and Auditor General 2006, 4):

> Collaboration and partnership between local and central government public entities and communities is now often expected if public policy objectives are to be realistic and achievable. However, I acknowledge that strong and sustainable relationships and, most particularly, partnerships, may be difficult to achieve where there are major disparities between public entities and NGOs in terms of relative power, size, and governance structures.

These observations were echoed by participants interviewed in this project who noted that there will always be tensions between the sector and government. One participant commented that if there was no tension, then the sector was not doing its job and had become too close to government. The key issues, participants argued, were the levels of the tension and the extent to which there were effective mechanisms to manage it. Also, people interviewed during this project questioned the extent to which personnel in government bureaucracies were willing and able to work with partnership models that represented a meaningful level of equality between the two parties. They observed that the numerous and complex accountability and transparency requirements placed upon them and the complexity of the non-profit sector created particular challenges for the development of meaningful partnerships.

Some of the key initiatives undertaken in the current era are discussed in more detail in the following section.

Key initiatives since 2000

Since 2000, several key initiatives have been launched by the Government seeking to define a shared way forward with the non-profit sector. Policy thinking in this area recognises that relationship development is a long-term project that will proceed at different rates in different state agencies and in different parts of the sector depending on a wide range of contextual factors.

Establishment of a Ministerial position
In recognition of the value of building strong government-sector relationships a new Ministerial portfolio (initially titled Minister Responsible for the Community and Voluntary Sector) was established in 1999.

The Community and Voluntary Sector Working Party and the Community-Government Relationship Steering Group
In 2000, the government established a joint community-government working party to address concerns that the relationship between the government and the community sector was not healthy and needed direct action. The Community and Voluntary Sector Working Party gave expression to a Labour Party manifesto commitment, drafted in response to lobbying by key national and umbrella community organisation leaders before the November 1999 General Election. The working party was to take a whole-of-government approach and consider a possible formal agreement between

the Government and the community and voluntary sector (Baxter 2002, 1). In the end a formal compact, like the one between the sector and the Government in England, was not favoured. The need behind this idea was expressed instead in the Statement of Government Intentions discussed below.

The working party's report (Community and Voluntary Sector Working Party 2001) provided a powerful acknowledgement of the poor state of the government-sector relationship and expressed a shared commitment to developing a better way of working together. The Government agreed that a second phase of relationship building would occur throughout 2001-2002. This involved further collaboration between community representatives and government officials (appointed by the Minister for the Community and Voluntary Sector) to a steering group. This steering group, the Community-Government Relationship Steering Group, decided on three work streams:

- participatory processes
- resourcing and accountability
- strengthening the community sector.

The work of these three streams was reported in the document *He Waka Kotuia - Joining Together on a Shared Journey* (Community-Government Relationship Steering Group 2002).

The steering group held regional community meetings, hui and fono[6] and national level meetings across the sector to develop proposals for further development. The report recommended that a Community Sector Strategic Directions Forum be convened to consider the way forward (Community-Government Relationship Steering Group 2002, p15). Following this, the Community Forum Taskforce and Te Wero (Action Group Māori) were established.

The 2001 Statement of Government Intentions for an Improved Community - Government Relationship (SOGI)

In December 2001, the Government issued a Statement of Government Intentions for an Improved Community/Government Relationship (SOGI) which was signed by the Prime Minister and the Minister Responsible for the Community and Voluntary Sector. This document was a "directive to chief executives to take responsibility for action within their own agencies…not a formal accountability document. It is not part of any purchase or performance agreement with departments… But it does serve as a 'flag'" (Baxter 2002, 12). This document was intended to underscore the Government's commitment to the development of a new, partnership-based approach for working with sector organisations.

Key points in the SOGI included that the Government was committed to developing relationships with community, voluntary and iwi/Māori organisations that:

- enable mutual interests to be achieved through co-operation
- respect the independence of community, voluntary and iwi/Māori organisations
- recognise and respect the principles of the Treaty of Waitangi
- demonstrate effective two-way communication
- involve leadership within the community sector and from government Ministers

[6] Fono are group meetings of Pacific peoples.

- acknowledge and support the positive role played by umbrella, national and strategic collective bodies
- embrace innovation and creativity
- respect and recognise cultural diversity
- are founded on public accountability and appropriately flexible good practice (SOGI 2001,1).

As a formal document issued by the Government, the SOGI represented a significant point in the history of government-sector relationships. The vision of the SOGI was for "strong and respectful relationships between government and community, voluntary and iwi/Māori organisations" (Ministry of Social Development 2001,1). The document acknowledged the role that the community plays in shaping and contributing to New Zealand society and recognised an interdependent relationship between the non-profit sector and the state. These two orientations do not always sit comfortably together and at times they conflict. Contradiction and tension thus feature alongside the desire for an improved relationship.

The SOGI provided the framework for the state's approach to its relationship with the sector. It framed the language used by government agencies to describe interaction with sector organisations - building capacity, capability and co-operation being key phrases repeated in many key government documents. As an aspirational document it sought to encourage a range of collaborative approaches rather than mandating a single approach to be used in all situations. Interviewees (both state and non-profit sector personnel) suggested that some government agencies did not see the SOGI as applying to them at all because it originated in another department, not their own. None of the personnel from non-profit organisations outside of Wellington interviewed for this research were aware of the existence of SOGI or considered that it had had any impact on the nature of their relationship with government agencies. Moreover, it was not clear that government officials with responsibility for interacting with non-profits knew of or understood the responsibilities SOGI might hold for them.

Establishment of an Office for the Community and Voluntary Sector
An Office for the Community and Voluntary Sector was created within the Ministry of Social Development in 2003. Its mission was to work across government to build strong and respectful relationships between government and the community and voluntary sector (Office for the Community and Voluntary Sector 2005, 37). The office has led a number of initiatives across the sector and works to provide leadership within the state sector on issues of importance to the sector. The office has also worked collaboratively with sector organisations over the production of key resources (see, for example, *Keeping It Legal* and websites focused on good practice[7]). It has led a number of important initiatives concerning funding, accountability, participation in policy, promoting generosity and volunteering[8].

Te Wero
Established in 2003, Te Wero (Action Group Māori), was one of the initiatives that emerged out of *He Waka Kotuia*. Te Wero reviewed government documents and material published by Māori organisations. Te Wero's purpose was to examine "the quality and effectiveness of Treaty-based engagement between tangata whenua and government departments" (Office for the Community and Voluntary Sector, 2003).

[7] www.keepingitlegal.net.nz; www.goodpracticeparticipate.govt.nz; www.goodpracticefunding.govt.nz
[8] www.ocvs.govt.nz

Te Wero held various hui to discuss ways of strengthening engagement[9]. This group developed case studies of successful government/Māori interactions and made recommendations for extending these models across the government sector[10]. Te Wero reported its findings to the Minister for the Community and Voluntary Sector in 2004. The Office for the Community and Voluntary Sector website notes the report noted that many relationships between government agencies and Māori organisations were progressing well and made recommendations on how new and existing relationships could be put on a firmer footing[11].

The Community Sector Taskforce

Initially called the Community Forum Taskforce, the Community Sector Taskforce was established by the Community-Government Relationship Steering Group as a way of progressing recommendations made by *He Waka Kotuia*. The Labour Government agreed to fund its establishment as one of the initiatives flowing from the steering group's recommendations. As noted earlier, its primary goal at this point was to set up a Community Sector Strategic Directions Forum.

The taskforce changed its name to the Community Sector Taskforce shortly after it was established. It extended its mandate to include providing an independent perspective, to assist in decision-making about issues concerning the sector and to develop strategies that would assist in government-sector communications (eg, forums). The taskforce began meeting in 2003 and undertook a vigorous programme of consultation and development, organising forums around the country and supporting a range of initiatives within the sector[12].

The relationship between the taskforce and government has not always been smooth, with questions from government about the representativeness of the taskforce on the one hand, and questions by the taskforce about the commitment of government to working with it in partnership on the other (Community Sector Taskforce 2007). A member of the Committee for the Study of the New Zealand Non-Profit Sector commented that the taskforce fell out of favour with the Government because of its firm commitment to a Tiriti/Treaty framework.

The taskforce became involved in a number of sector initiatives such as development of a Tangata Whenua, Community and Voluntary Sector Research Centre (which has since become separately established and funded from the public and private sources)[13]. In 2009, the Government provided funding to a re-emergent taskforce to strengthen local community networks to engage with each other, and to assist community organisations to work within a Tiriti/Treaty framework.

National community-Government forum 2007

In 2007, a national community-government forum brought together 135 people from community and voluntary organisations, 31 government agencies and 13 Ministers to discuss cross-cutting issues affecting the sector.

The final plenary called for further work on an independent group to represent the sector, based on a Treaty relationships framework, and also noted that action to support the sector needed to have a local, regional and national focus.

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[9] www.community.net.nz - He Panui - an invitation from Te Wero - NZ community group news - CommunityNet Aotearoa New Zealand.htm

[10] www.ocvs.govt.nz/work-programme/building-capacity.html

[11] www.ocvs.govt.nz/work-programme/building-capacity/#TeWeroActionGroup/Maori10

[12] www.community.net.nz/hottopics/cstaskforce/background/History.htm

[13] www.communityresearch.org.nz

Pathway to Partnership
The theme of improving relationships between government and the sector was apparent in the Labour-led Government's Pathway to Partnership Budget 2007 initiative. The stated aim was to set out a framework for a new relationship between government and non-profit organisations involved in providing essential services for children and families. The goal of the package was to build:

> Strong, sustainable and more effective community-based services for families, children and young people. At its core is the strong supportive working relationship between government and the community sector. It recognises that community-based providers of services for children, young people and families play an essential role in supporting families and making sure children and young people get the best start in life[14].

In 2009 the National-led Government redirected $104 million of Pathway to Partnership funding to support a Community Response Fund. The remaining Pathway to Partnership funding was retained in departmental funding. The Government also signalled its intention to work with community-based social services to reshape the funding model to ensure that funding delivered best value for money, reflected the policy priorities of the Government and positioned services to effectively respond when New Zealand emerged from the downturn.

Review of the SOGI 2008-2009
During 2008 the Government funded the Association of Non-Governmental Organisations of Aotearoa (ANGOA) to undertake an assessment of government responsiveness to the SOGI. The review found that:

> From the perspective of the tangata whenua, community and voluntary sector, the SOGI has continued value as an affirmation of Government's trust and respect as the essential underpinning of its relationship with the community and voluntary sector[15].

The ANGOA review was delivered to the Minister for the Community and Voluntary Sector in February 2009 and contained 15 recommendations, including that:

- the Government note the value of the SOGI
- government agencies responsiveness to the SOGI be regularly evaluated
- the location and resourcing of the OCVS be reviewed
- processes for funding community and voluntary organisations be further simplified
- an independent non-government research organisation be resourced.

Examples of government agency initiatives

A number of government departments responded in early 2000 with initiatives to increase funding to the sector and to establish mechanisms for improved consultation, for example:

[14] www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/pathway-to-partnership/
[15] http://www.angoa.org.nz/angoa.documents/SOGI-Foreword-Recommendations.pdf

- Child, Youth and Family allocated more than $4 million in additional funding to enhance the viability of service providers, re-negotiated contracts to reduce the level of outputs, introduced grant funding for certain types of services and reduced compliance costs in obtaining funding from Child, Youth and Family
- the Ministry of Health and health sector NGOs set up a process for addressing relationship issues at national and strategic levels. The Ministry established an NGO desk and an ongoing process for meeting and discussing issues with the sector
- Housing New Zealand convened a Social Housing Strategy Workshop, established a partnership division to develop and engage in partnerships with NGOs and iwi to expand the supply of affordable housing, and has a number of initiatives under way aimed at addressing social exclusion and fostering strong, sustainable communities
- the Ministry of Youth Affairs and the Ministry of Social Development worked together on the Children's Agenda to improve participatory and democratic processes when consulting with children and young people
- changes in the Local Government Act placed a clearer emphasis on engaging with local communities in planning and service delivery
- the 2001 Review of the Centre project, jointly led by the State Services Commission, the Department of the Prime Minister and Cabinet, and the Treasury, reviewed the public management system. The review looked at how well the public service responds to needs and expectations of Ministers and citizens (individuals, communities, business or Māori).
- as a follow-up to the Review of the Centre, an advisory group assisted the State Services Commissioner to implement a work programme. The programme was directed at improving the performance of the state sector in relation to integrating service delivery, including looking at ways of improving co-ordination and addressing intractable problems, addressing fragmentation and improving alignment, and enhancing the people and culture of the state sector, with a particular emphasis on improving leadership.[16]

Other actions which emerged from government following the Community and Voluntary Sector Working Party (2001) are documented in the publication *A Community-Government Relationship: The Road to A Cross-Sectoral Forum* (Office for the Community and Voluntary Sector 2007b).

Between 1999 and 2000, the Ministry of Foreign Affairs and Trade (NZAID) and the umbrella association for aid and development non-profit organisations, the Council for International Development (CID), developed a shared agreement concerning their relationship which was updated and launched at the end of 2003 (NZAID/Council for International Development 2003). The document acknowledges the interdependent relationship between NZAID and international aid and development NGOs. It aimed to maintain the independence of those NGOs "while maximising the opportunity for collaboration in addressing common goals and priorities" (NZAID/Council for International Development 2003, 6). The agreement included some significant statements concerning the nature of the relationship (NZAID/Council for International Development 2003, 9):

[16] An important part of this review, implicitly and explicitly, is the work of the not-for-profit sector and its relationship to government.

Independence
Recognition of and support for the independence of the NGO sector, including its right within law to comment on government policy and work for change in that policy, irrespective of any funding relationship that might exist, and to determine and manage its own affairs. Recognition that independent voluntary and community groups are important factors in socio-economic development.

Accountability
Recognition that the respective accountability requirements and processes of NZAID and NGOs differ. NZAID is accountable to Parliament and the New Zealand public for expenditure of public funds and the implementation of the official aid programme. NZAID requires similar accountability from NGOs for funding provided through its various programmes. NGOs have multiple accountabilities to partners, donors, memberships and constituencies that must be addressed through sound management practices and governance structures. Together NZAID and NGOs recognise that they are accountable to the New Zealand public for reporting on initiatives on which they collaborate.

In 2002 the Ministry of Health and health sector NGOs developed a Framework for Relations[17]. The framework agreement was between the Ministry and all health and disability NGOs with which it has contractual relationships. It also established an NGO desk to improve communication between the Ministry and the NGO community and focused on promoting sector forums for discussion, understanding, information sharing and relationship development. The Ministry intended the desk to be an anchor to "provide continuity and a link with the NGO-related work of the MOH and other government departments" (Ministry of Health 2002, 6). An NGO Working Group comprising 12 elected representatives from across the health and disability sector work with a desk officer. This group undertook a number of surveys of the nature of the relationship between NGOs and statutory health authorities (in 2003, 2004 and 2007) suggesting:

> Overall, the survey results indicated the need for improved, more equal relationships, in particular increased understanding, more clearly defined expectations and more effective, regular communication, including constructive feedback on reports and greater involvement in planning and consultation. The feeling that District Health Boards did not understand or appear to try to understand their organisation was widely expressed (NGO-Ministry of Health Working Group 2003, 2).
>
> The results of this survey demonstrate that there are significant variations in the quality of the relationships that NGOs have with the Ministry of Health and DHBs. Some of these are very positive, and some not so…
>
> Overall, the relationship that NGOs had with the Ministry of Health was less positive than the relationship that many of the same NGOs had with other ministries, with no one describing their overall relationship with the Ministry of Health as excellent and half describing it as only fair. This is a slight deterioration on the last survey results. The relationship that NGOs had with DHBs overall was slightly better with half describing the relationship as good (Health and Disability NGO Working Group 2007).

[17] http://www.ngo.health.govt.nz/moh.nsf/indexcm/ngo-resources

Public sector reforms and their impact on the relationship

A changing relationship

A particular impact on the New Zealand government and non-profit sector relationship in recent decades has been the public sector reforms. The new language of public sector management has increasingly structured how non-profit organisations talk and think about themselves, how government bureaucracies think and talk with them, and has consequently shaped the territory upon which government-sector relationships unfold (Larner and Craig 2002). Schick (2001) observed that the depth and breadth of public sector reforms in the 1980s was a total change rather than a modification to existing practices. This suggests that work to establish improved government relationships with the non-profit sector will require a significant effort.

The more recent shift to a focus on outcomes-based contracting by government agencies (rather than outputs) raises the issue of how outcomes are identified and measured. It also brings into focus the extent to which the non-profit sector (often contracted to deliver to these outcomes) should have a role in determining and measuring these outcomes. The extent to which this new development will achieve an improved, more consultative engagement between government agencies and non-profit organisations engaged in providing services has yet to be fully tested. One official reflecting upon the new focus on outcomes noted:

> The focus on outcomes has also brought the problem of attribution into stark relief. When government funds a third party as a means to achieving an outcome, there is a leap of faith involved for government that the third party activity will contribute significantly to the outcome.

Reform, review, reorganisation and restructuring have characterised state sector activity since the mid-1980s. The nature and shape of the state sector and its interface with other sectors has altered markedly over this period and this has influenced the activity and shape of the non-profit sector. Evidence exists that the language of reform, referred to as the rationalist paradigm in the recreation literature (Sam and Jackson 2004), in social and health services as new public management or managerialism (Gauld 2004), and in arts as "the reshaping of the visual arts infrastructure in response to the marriage of right wing economics and left wing cultural politics" (Miles 2001, 2[18]) influenced many fields of non-profit activity.

Nowland-Foreman (1998) recounts the experiences of one large non-profit social service:

> Then, in 1981 came a letter of understanding setting out mutual expectations - putting in more legalistic terms what had always been agreed by both parties. By 1985, the gentle winds of change turned into a hurricane that blew through an unsuspecting voluntary sector. Across the country, voluntary organisations receiving government grants were shaken and dishevelled by the mini tornadoes of contestability, accountability, the funder-provider split, performance indicators and the overwhelming and icy winds of managerialism.

In the sport and recreation sector, the Government initiated a review resulting in the Report of the Ministerial Taskforce on Sport, Fitness and Leisure, referred to as the

[18] http://www.vuw.ac.nz/adamartgal/artforums/2001/anna-miles.html

Graham Report (Ministerial Taskforce on Sport, Fitness and Leisure 2001). In 2001 the Community and Voluntary Sector Working Party had recommended some loosening of overly prescriptive controls. It suggested that time be invested in relationship development between the government sector and non-profits as well as the recognition and valuing of diversity. The Graham Report and subsequent strategic documents produced by SPARC, however, identified among other things, the need for increased levels of regulation and control, a more centrally driven agenda to achieve standardisation of sporting groups and funding that was tied to groups' capacities to contribute to Government-determined goals and objectives.

> Organisations often lack clear focus and professionalism. Many find it difficult to maintain their focus and instead allow funding opportunities and a passion for sport and physical recreation to drive their activity… It is clear that greater professionalism will be required over the next 10 years (SPARC 2006, 8).
>
> A central mechanism by which SPARC's mission will be achieved is through investing in organisations that are capable of making a positive impact on SPARC's mission… SPARC will focus on investing funds rather than supporting entitlements. Allocation decisions will be made on the likelihood of maximising a return on investment (measured by the impact on SPARC's mission) (SPARC 2006, 17).

Interviews with sport and recreation sector personnel highlighted the requirement to meet government goals as one of the major issues affecting the work and contribution of these non-profits.

In a similar vein, the interface between the government and arts and culture non-profits was reviewed during the late 1990s. While the resulting report Heart of the Nation (Heart of the Nation Strategic Working Group 2000) considered the arts and culture field generally, non-profit groups were considered to be one of a range of organisational types in this report. Heart of the Nation considered the contribution non-profit groups made to arts and culture to be substantially the same as that articulated by SPARC:

> A cultural return from New Zealanders' experience of their own culture - this reinforces identity and assists in building social cohesion; and an economic return from both local and international consumption of cultural products and services (Heart of the Nation Strategic Working Group 2000, v-vi).

In his discussion of arts funding, Reid (1996) notes that the changes to the arts sector in the 1990s blurred the distinction between the non-profit sector and the commercial sector.

Some participants in this study noted that there was a particular risk that non-profit organisations were shaping their work by funding criteria rather than by their organisational missions. Concerns about the extent of mission drift for non-profits away from their original purposes and towards government agendas (which themselves shift over time) were voiced by most of the non-profit personnel interviewed during this project.

There is, then, a diverse body of evidence that both Labour-led and National-led governments have sought to shape sector activity to achieve their social and economic goals. In doing this, they have encouraged sector organisations to operate on rationalist and bureaucratic principles that characterise the public sector reforms. This means that they have tended to favour professionalised and more hierarchical models over others, particularly when the transfer of funds from the state are

involved (Ministry of Social Development 2006e, Sam and Jackson 2004, Shaw and Allen 2006, Miles 2001).

The increasing emphasis on compliance, regulatory requirements and risk aversion were all identified by people interviewed during this project (both people from the non-profit sector and government officials) as particularly demanding dimensions of the current relationship between government agencies and non-profits. These matters are also identified in recent Cabinet documents concerning the social, health education and justice fields (Ministry of Social Development 2006e). Wilson (2001) also draws attention to this in her review of literature on social service volunteering.

Contracting as a significant factor shaping sector-government relationships

Since the 1980s, government financial support of non-profit sector activity has been primarily delivered through service contracts. The move to contracts signalled a fundamental change in the nature of the relationship between the sector and government. Commentators such as Nowland Foreman (1998) and the New Zealand Council of Christian Social Services (1998) identify a preference by government for contract-based funding of non-profit sector activity. Contracts have come to be the public face of the state sector reforms in terms of the impact on the sector and its capacity to achieve its own objectives. In this connection. Nowland Foreman suggests (1998, 113) that:

> The developments in funding technologies [move from grants-in-aid to contracts] reflect and reinforce identifiable changes in how the relationship between government organisations is conceived in the literature… [as a] shift away from voluntary organisations being regarded as autonomous representatives of the community and toward… convenient conduits for services to the community.

Few government agency programmes now provide funding in the form of grants with the Department of Internal Affairs administering the most extensive government small grants programme for community organisations. More recently, grants re-emerged as funding tool for smaller allocations in particular areas of government. For instance, Child Youth and Family began developing a grant-based system for allocations of less than $50,000 per annum in 2002 and the Ministry of Social Development's Family and Community Services now run a range of conditional grant programmes mentioned earlier.

The announcement of the Pathway to Partnership programme in 2008 by the then Minister for Social Development and Employment signalled a desire to move towards more grant-like funding arrangements for what are described as essential social services.[19] The Ministry's Good Practice Guide (Ministry of Social Development 2006a,b) provided guidance on when to use a contract and when to use a grant. This document indicated that grants should be used for low-risk activities that are not part of core government activities. Grants allow non-profit organisations more flexibility in deciding how to meet stated goals than is the case in contracts. Contracts are formal legally enforceable documents that set out expectations for providers to meet.

The framework for public sector contracting was derived from agency theory (Anderson and Dovey 2003, Cribb 2005) and sought to establish a separation between policy-making/funding and service provision. It drew significantly upon new-

[19] www.beehive.govt.nz/speech/statement+to+parliament+2008

right economic theory (Crampton et al 2001, Robinson and Williams 1992, Te Korowai Aroha Aotearoa Inc, Bradford and Nowland Foreman 1999). It was expected that these changes (see, for instance, Buchanan and Pilgrim 2004) would achieve increased transparency through opening up contestability and competition, accountability and control through formal contract mechanisms by funders of the services to which they made a financial contribution[20].

The focus on accountability for government funding is not new. Despite the issues that contracting has raised for many sector organisations, there remains for Government the crucial issue of ensuring the proper, efficient and effective use of public funds and in this sense contracts have been seen as the best mechanism for achieving this. Passing public funds to another sector, be it for the profit or non-profit sectors, brings legally enforceable obligations.

The question then is how shall those obligations be managed and what are their implications for both government and the non-profit sector? The resultant relationships are at the heart of the question. There is a push for more trusting relationships on the one hand and a pull from key state institutions on the other seeking confidence around accountability, a pull reflected, for example, in the requirement of the Office for the Auditor General for risk-based approaches to procurement. Herein lies the dilemma faced by both government and the non-profit sector. Moreover, debates over the ways in which funds are used, such as the so-called hip hop funding[21], create political pressures around spending priorities.

Contracting was seen as a way of increasing the capacity of government to secure services to vulnerable or other populations that had been hard to reach (Controller and Auditor General 2006). Nowland Foreman (1998, 119) suggests that there is some evidence of increased opportunities for citizen involvement as contestable processes drew in new organisations and provided opportunities for communities that had not previously received state funds to make a case for new contracts.

Contractual frameworks allowed Government to establish relationships with a wider range of organisations than had been the case previously. In particular, smaller non-profit groups, iwi services and Māori organisations, organisations working with Pacific peoples and immigrant groups all began to establish relationships with Government (ANGOA 2001, Barrett 2001, 37; Community and Voluntary Sector Working Party 2001, 18; Crampton et al 2001, 14, 1999; Nowland-Foreman 1995, 3, 18; Te Korowai Aroha Aotearoa Inc, Bradford and Nowland-Foreman 1999, 4).

The difficulty of finding entities that could speak on behalf of the sector and that were of sufficient size that government machinery could comfortably relate to them has been noted in a number of places (Baxter 2002, 10, 14; Community-Government Relationship Steering Group 2002,18,19). Contracts provided one way around this. They allowed the state to deal with non-profit organisations in the same manner as it would with a for-profit organisation, and to focus solely on the specific activities it wished these organisations to deliver. From a government perspective, contracts provided a simple, easily manageable set of frameworks that could be used to advance its own interests, using both non-profit and for-profit entities as required to assist in this. This is particularly evident in the health sector where government does

[20] We refer here to the fact that for many non-profit providers, the introduction of contracts did not remove partial funding of services. Rather, they brought with them a contractual obligation to deliver more services than contract payments covered.

[21] This refers to a programme for teaching hip hop music, a programme that was funded by a government grant and was widely criticised politically as an example of wasted expenditure.

not distinguish between for-profit and not-for-profit service providers and, therefore, even has difficulty identifying the quantity of funding that is paid to non-profit groups.

Sam and Jackson (2004) and Shaw and Allan (2006) suggest that in sport and recreation, important functions of non-profit organisations, such as diversity, innovation and responsiveness, have been sacrificed to the pressure for uniformity and greater central control, despite the promise of contracting which providing arms-length delivery. This was achieved through the tight specification of purchase units that allowed little room for individual organisational innovation or adaptation to local circumstances. Innovation is often identified as a key function of non-profits, and approaches that restrict their capacity to innovate can be seen as a risk to sector capacity to deliver high quality services (Bryder 2003; Millen 1999; Robinson, 1992; Wilson, Hendricks and Smithies 2001). Shaw and Allen (2006, 215) suggest that the narrow focus on accountability and transparency in funding arrangements has also resulted in important communication difficulties:

> A [key] feature of funding relationships that has been severely undermined by the changes in approach to non-profit funding and management over the past 20 years. During this period funders' styles of communication have become more hierarchical and autocratic (Darcy 2002). These styles of communication rarely work in a funding relationship as they may lead to resistance by those low in the hierarchy as they may feel that their views are not appreciated (Cooper 1995).

Several local writers link the introduction of contracting with a reduction in use of volunteers and involvement of local citizens in both day-to-day activities and governance of non-profit organisations (Nowland Foreman 1998, 109; Higgins 1997; New Zealand Council of Christian Social Services 1998; Community and Voluntary Sector Working Party 2001).

Contracts favour standardised approaches and emphasise what can be easily measured. They are well suited to the purchase of specific, easily defined, discrete products that can be readily quantified but this is not necessarily what is most important to the purchaser, the provider or the community (Ernst and Young 1996; Matheson et al 2005; New Zealand Council of Christian Social Services 1998; Nowland Foreman 1998; Sam and Jackson 2004; Shaw and Allen 2006). There is a risk that services become responsive to the requirements of the funder rather than the needs of the user or of the community (Morris and O'Brien 1999). The New Zealand Council of Christian Social Services (1998, 22) suggests that contracts emphasise the funded project at the expense of the organisation. This has been called swamping and is related to mission drift or funder capture. Some sector organisations argue that contracts contributed to a loss of capacity to autonomously determine organisational direction, values and guiding philosophy (New Zealand Council of Christian Social Services 1998; Munford and Sanders 1999; Nowland Foreman 1995). Government agencies also expressed similar concerns (Department of Social Welfare 1996).

Contracts have been experienced by sector groups as onerous and demanding, and compliance costs have been identified as significant burdens. A report from the Ministry of Health (Ministry of Health nd) notes that contracts have not kept pace with increasing costs of service delivery, with increasing compliance costs, meeting new legislative requirements such as the Health Practitioner's Assurance Act 2004 and the Holidays Act 2003, as well as the cost of providing services in geographically diverse areas.

The effects of partial funding, which predated contracting but have been exacerbated by the tighter specification of contracts, have been particularly evident in the child, family and community services field. In important respects, partial funding undermined key principles espoused in moving to the contracting model. Non-profit organisations entering into such arrangements have found themselves constantly searching for supplementary funds and delivering services below cost. The current move away from narrow, multiple contracts was described by participants as an important development. Contracts can, as indicated above, also reduce innovation, diversity and responsiveness as increasing amounts of activity become subject to externally defined contractual activities (Sam and Jackson 2004; Shaw and Allen 2006; Nowland Foreman 1998; New Zealand Council of Christian Social Services 1998).

The Funding for Outcomes (2003) and Pathway to Partnership (2008) initiatives of the 2002 and 2005 Labour-led Government were developed partly in response to some of these issues:

> Funding for Outcomes is designed to simplify the contracting process and improve the provision of services delivered by community, iwi and Māori social service providers that are funded by two or more government agencies. Funding for Outcomes focuses on the results clients experience from the services delivered. It allows services to be integrated and providers report to government agencies on their complete service delivery, not just the part paid for by each funder. This means that the provider doesn't have to negotiate numerous contracts, write as many reports and provide information for multiple audits[22].

Crown-iwi/Māori relationships[23]

Recognition of relationship issues

Spanning the end of the National-led administration in the late 1990s and the Labour-led administration up to 2008, government agencies undertook a significant amount of work aimed at improving relationships with the sector both as a whole, and in relation to specific fields.

The Government's relationship with iwi/Māori organisations is acknowledged in the SOGI which states that government agencies are expected to apply the principles of the Treaty of Waitangi to their work.

Crown/Māori relationship issues were also given significant attention in both *Communities and Government: Potential for Partnership, Whakatopu Whakaaro* (Community and Voluntary Sector Working Party 2001) and *He Waka Kotuia - Joining Together on a Shared Journey* (Community-Government Relationship Steering Group 2002). Unresolved Treaty issues were identified as having a wider impact on the overall Government-sector relationship:

> The lack of resolution to Treaty-based issues has been suggested to be a significant barrier to improving the overall relationship between the

[22] http://www.familyservices.govt.nz/our-work/community-development/funding-for-outcomes.html
[23] The term Crown-iwi/Māori relationships is used here to reflect the need for the Crown to develop relationships with iwi as Treaty partners and with Māori organisations in the non-profit sector. These organisations are not all iwi-based.

> government and the non-profit sector (Community-Government Relationship Steering Group 2002, 10).

Unresolved issues identified by the 2001 working party and 2002 steering group include the mandate of different iwi/Māori organisations, and the importance of recognising that solutions and responses need to be tailored to the realities and needs of individual iwi/Māori organisations. This suggests a need for multiple rather than single responses.

Most recently, the ANGOA review of the SOGI (2009) notes that:

> Many Māori organisations want to see more substantive acknowledgement and commitment to the Treaty relationship, noting that "there is an increasing tendency to invisibilise Treaty of Waitangi issues and other issues relevant to Māori and replace it with terms of equity and diversity. Attention to issues impacting on Pacific peoples are treated in similar fashion" (Morrison and Vaioleti, 2008)[24].

Three identified issues

The Treaty of Waitangi and the diversity of iwi/Māori organisations across the non-profit sector give a distinctive character to the New Zealand sector that is not apparent in discussions of the sector internationally. Three particular issues appear in the documents that discuss the Crown iwi/Māori organisational relationship and identified in the research for this project:

Dual role of iwi/Māori organisations

Tangata whenua participants interviewed emphasised that iwi/Māori organisations have strong connections to their communities and to the sector, but are not solely or totally part of the sector. This is echoed in the early community-government relationship documents (see also Tennant et al 2006, 31):

> … it was evident that iwi/Māori organisations have a strong interest in the community sector but do not feel entirely or solely part of it. For many Māori, there are no clear distinctions between their relations with the Crown as Treaty partners and the exercise of *tino rangatiratanga* within that relationship, and their role in delivering social, health, education and other services to Māori as citizens (the practice of *manaakitanga*)… There was a clear sense that Māori continue to feel disempowered and suspicious of the Government and government agencies and many have become increasingly resolute in their quest for iwi self-government and greater control over their own future and resources. For iwi/Māori organisations, an improved relationship between government and the community sector must be built on processes that provide explicit constitutional recognition of iwi as tangata whenua. (Community and Voluntary Sector Working Party 2001, 17-18 cited in Baxter 2002, 10).

The importance of the relationship with and accountability to their iwi was particularly strongly highlighted by Māori key informants interviewed in this study. Diversity among iwi/Māori organisations, a clear desire for individual iwi, in particular to be able to develop independent and separate relationships with the Crown and the diverse range of Māori realities more generally are all issues of importance to the Māori/iwi-Crown relationship that have been raised over recent years (Community-Government Relationship Steering Group, 2002 18-23).

[24] http://www.angoa.org.nz/angoa.documents/SOGI-Full-Review.pdf

Contested issues within the sector and across the country
The Community and Voluntary Sector Working Party also reported on a diverse range of views across the country on Treaty issues:

> The Working Party [noted] a significant gulf between this position and the responses of other New Zealanders, with views ranging from open hostility to discussion of Treaty issues, to an assumption that any disparities are primarily matters of socio-economic disadvantage, through to an acceptance of at least some degree of iwi self-government. (Community and Voluntary Sector Working Party 2001, 17, 18 cited in Baxter 2002,10).

Documents produced by non-profit organisations also note this issue (Community Sector Taskforce 2006, 4):

> Over the last 165 years there have been many aspirations for Te Tiriti/Treaty of Waitangi articulated by Māori and non-Māori alike. There have been many attempts, both good and bad, to implement Te Tiriti/Treaty within the infrastructure of government and within the community. Those attempts have been mixed, some for the good of *all* people and some have focused on the good of *some* people at the expense of Māori. There have also been some recent perceptions that Te Tiriti/Treaty of Waitangi has been used by Māori at the expense of non-Māori.

Participants interviewed in this project had diverse responses when discussing the impact of the Treaty of Waitangi on the relationship between government and the sector. While some considered that it had had a significant effect, others thought that the impact was minimal, with organisations often unsure how they could most appropriately give effect to notions of Treaty partnership. One interviewee argued that it was the experience of working with Treaty obligations and commitments and the impact of Māori which had made governments in New Zealand more alert and sensitive than any other Anglo-Saxon country to diversity generally. The importance of proper and respectful Treaty relationships was also highlighted in the interviews with Pacific peoples.

Diversity and inconsistency in relationships between government agencies and iwi/Māori organisations
The Community-Government Relationship Steering Group (2002, p18) found that:

> Feedback from consultation with Māori… also indicates that the Crown has many faces - widely ranging in willingness, capability and the required leadership to engage with iwi in a Treaty relationship. This echoes voices of Māori in Puao-Te-Atatu (1986) and the Report of the Royal Commission on Social Policy (1988).

Government work programmes have focused in various ways on issues particular to iwi/Māori. Te Puni Kōkiri (the Ministry of Māori Development) has a particular focus on the development of relationship management capacity including:

- activating, developing and realising Māori potential through key stakeholder relationships
- building stronger relationships with whānau, hapū, iwi, Māori organisations and communities, to enable them to develop sustainable opportunities for themselves
- strengthening partnerships between Māori and other key stakeholders

- facilitating timely involvement for government with Māori and increasing that connection (Te Puni Kōkiri 2006).

Both Te Puni Kōkiri and the Law Commission (2002) identified deficiencies and concerns with existing legal forms available to iwi and other Māori organisations. The Law Commission (2006) proposed the development of a new legal framework (currently before Parliament as the Waka Umanga Bill) specifically shaped to meet the needs of iwi, hapū and other Māori groups, especially those managing communal Māori assets following settlement of Treaty of Waitangi claims.

The Ministry of Health has also considered the nature of its relationship with iwi/Māori providers (Ministry of Health 2003) and identified that there were specific matters concerning lack of guidelines, commitment to Māori provider development, and issues related to audit.

Many individual government agencies have developed their own specific arrangements with iwi/Māori organisations, such as memoranda of understanding. To address inconsistencies, the Ministry of Justice and Te Puni Kōkiri undertook significant work in 2006 to develop Crown/Māori Relationship Instruments Guidelines (available on both agencies' websites). That work was well-supported by Māori participants. The guidelines are designed to:

- increase consistency between Crown/Māori relationship instruments
- increase awareness of existing agreements across the state sector
- contribute to the living relationship envisaged by both parties to the Treaty of Waitangi
- assist the development of robust relationships between the Crown and Māori[25].

However, there is more to be done.

Moving ahead

The Labour-led Government made a policy commitment to improve the overall position of Māori and to improve its relationships with iwi and with Māori organisations. The approach taken at times faced a strong reaction (see, for example, the Orewa speech delivered by the then leader of the National Party Don Brash[26]).

The Community Sector Taskforce (2006) set out proposals for a Treaty of Waitangi Relationships Framework to assist community organisations to be more responsive to Māori. The taskforce has also sought to develop local and regional networks that support its framework.

The ANGOA review of the SOGI has recommended that a Treaty of Waitangi Commission be established so that the Crown/iwi relationship can be addressed in dialogue by government, iwi/hapū and the community and voluntary sector[27].

[25] http://www.goodpracticeparticipate.govt.nz/working-with-specific-groups/maori/index.html#CrownM%C4%81oriRelationshipsInstruments2, accessed 28 April, 2009.
[26] http://www.scoop.co.nz/stories/PA0401/S00220.htm.
[27] http://www.angoa.org.nz/angoa.documents/SOGI-Foreword-Recommendations.pdf

Larger and wider constitutional issues within which any discussion of the Crown/iwi/Māori non-profit sector organisation relationship need to be framed remain subject to discussion within the executive of Government.

Local government and non-profit organisations

Territorial local authorities

Local authorities in many jurisdictions have sought to develop the level and nature of interactions they have with non-profit organisations and to develop policy positions that provide a positive framework for these relationships (Burke 2004). In general, the position of local government has mirrored that of central government. This has been particularly the case since the Local Government Act 2002 which requires local authorities to significantly develop their relationships with their various communities of interest through processes such as Long Term Council Community Plans (LTCCP) and the Community Outcomes Process (COP).

The Local Government Act 2002 gave renewed impetus to community development initiatives that, in some cases (for example, at the Waitakere City Council), had been long-standing. A number of initiatives, such as the partnerships in West Auckland, in Taranaki (Future Taranaki Facilitation Group 2004), in Wellington and the Nga Te Kau marae programme (Ministry of Social Policy 2000, 7) focus on building local government-sector relationships. The Auckland City Council has taken an active role in attempting to co-ordinate services and programmes for the homeless. The Christchurch City Council drew on the British notion of a compact with the sector and developed a comprehensive set of policies to guide its interactions with non-profit organisations. Though still on the council policy register, today the council no longer actively promotes its local compact. Other local authorities paid particular attention to initiatives such as the Good Practice Guide (Office of the Controller and Auditor General 2006) in the development of contracting and grant-making relationships with non-profit organisations.

People interviewed as part of this project reported that these relationships were uneven, with some noting that non-profit organisations were not seen as part of the local community by some local authorities while others indicated very positive relationships. Māori participants described relationships as very good in some areas, particularly in relation to urupa[28], while in others there appeared to be little interest or knowledge on the part of the relevant local authority.

Health authorities

District Health Boards are local authorities which are responsible for implementing centrally promulgated policy and developing and implementing local health policy directly, for example, through public hospitals or through contracts with private or non-profit entities. DHBs are covered by the SOGI, so need to bear in mind its principles when engaging with non-profit organisations. Some have also become involved in the Funding for Outcomes initiative referred to above. The interface between the state and non-profit organisations is primarily through primary health, mental health and child health services. The Ministry of Health also works with the disability, personal and public health areas within the health sector.

[28] Urupa are burial grounds.

The Labour Government's Primary Health Care Strategy required the creation of Primary Health Organisations (PHOs), non-profit organisations which have played a key role in the implementation of that strategy (Crampton et al 2001) by developing and delivering a range of primary health care services. PHOs are a recent example where government policy created a whole new group of non-profit organisations which have as their central purpose the implementation of government policy. It illustrates the value the state places upon the sector as an important partner in key policy areas. The development of PHOs in the long-term will be an interesting initiative to watch as they work to create a place for themselves in the non-profit sector and as they work out the way in which they will respond to any changes in government policy.

The Primary Health Care Strategy and other initiatives at a local level have drawn DHBs into a range of engagement processes with non-profit organisations. In some regions there are strong, positive relationships between DHBs and non-profit organisations, while in others this process is still developing. As locally-based state funders and providers of health services, DHBs provide an important conduit for ongoing relationship development between statutory health and non-profit health organisations. The exact amount of funding that flows from statutory health funders to non-profit organisations is unknown because DHBs do not separate out payments to non-profit to for-profit providers, a somewhat surprising situation given the significance of non-profit organisations in the healthcare landscape. The recent NGO relationships with Ministry of Health and DHBs survey (Health and Disability NGO Working Group 2007) indicates that, according to health sector NGOs, relationships between DHBs and sector groups are somewhat more positive than those with the Ministry of Health, though there is room for improvement in both areas.

Umbrella groups

Internationally, umbrella groups, peak bodies or representative associations of non-profit organisations are noted as performing important functions such as providing information and other resources for member organisations and representing members over shared issues. In New Zealand a number of umbrella groups provide co-ordination and representation within specific fields, such as the environment and the social services. Others act as an umbrella groups in a more task or topic specific sense, drawing together and representing a range of local activities on a particular issue at a national level. National sporting bodies (SPARC funds more than 100) provide an example of topic specific groups as does the National Collective of Independent Women's Refuges. The NGO Family Violence Alliance was identified by some participants as an organisation that is currently providing advice to government agencies from a range of social and health field non-profit organisations.

Umbrella groups have also taken the initiative in developing cross-party Parliamentary forums, providing an opportunity for non-profit organisations to build links with MPs from all parties. ANGOA has organised pre-election meetings with party representatives.

Both ANGOA and the Community Sector Taskforce have sought, with limited success, to provide a sector-wide mechanism to bring non-profit organisations together to co-ordinate, advocate and develop the sector's own capacity to engage with government in policy processes. These two groups have attempted to build a common voice for the sector, a difficult and demanding task in a sector with such diversity. Much work remains to be done in this area.

Participants noted widespread diversity among umbrella groups, both in terms of resources and in regard to effectiveness. Some, such as the National Collective of Independent Women's Refuges (NCIWR), have been active for a long time and, as with other comparable organisations, have had impact both on policy and on shaping attitudes in the community. For NCIWR, this influence arises because its coverage and focus has been comparatively specific and also because of its longevity (having its origins in the 1970s).

Larger groups tend to have media resources within their own agency and greater ease of access to policy processes. They are often recognised by government agencies as important voices, though interviewees were divided about the effectiveness and impact of this engagement. Some umbrella groups expressed frustration and resentment because work they could effectively do for the parts of the non-profit sector they represented was being undertaken within Government, funded by resources that could have been provided to sector groups for them to do the work themselves. They suggested that taking a different approach, by directly resourcing sector efforts, would more effectively demonstrate partnership.

As noted elsewhere in this document, the issues of resources and capacity affect the ability of non-profits to influence government. Interviewees argued there was both wide variability in the capacity and resources within umbrella groups themselves and limited external support from funding bodies for non-profits to develop this capacity. As a result these groups tended to be reactive rather than pro-active. Some were able to use their resources, experience and expertise to proactively engage. As one interviewee observed, a key to developing a stronger role for the sector overall is to have the capacity to take a more active part in setting the policy agenda bringing local level experience and marginalised voices into the policy process.

Role of non-profits in influencing and shaping government policies

The small-scale of New Zealand society and relative accessibility of politicians has given an informality and interpersonal dimension to many of the interactions between non-profits and government (Tennant et al 2006). Non-profit organisations are very active in working with, critiquing and attempting to shape government policy in their respective spheres of interest.

Influencing government policy and practice

The current Parliamentary environment, based on proportional representation, has increased opportunities for non-profit organisations to influence and be heard in the political process. For example, the initiative to extend tax rebates for donations came from the minor political parties in the Labour-led coalition. The formation of public policy is complex and it is often not possible to identify a clear or linear process through which any single group or any collaboration of non-profit organisations have been able to shape policy or legislation. In most situations many different groups and individuals play a role in developing and/or creating new policy and/or legislation.

There are, however, a number of instances where direct links between non-profit action and policy outcomes can be identified. These have usually been where there was a specific constituency, and where an organisation either had significant political

power in its own right or had strong links with the governing political party. For instance, as noted above, developments post the 1999 election focusing on new relationship-building initiatives had their origins, at least in part, in lobbying by key national and umbrella groups before the 1999 election (see also, Baxter 2002, 1).

Māori interviewed in this project reported a range of different relationships with government, differences that were at times quite marked. For example, some observed that the Māori Land Court played an important role in resolving many issues of importance to Māori. This meant that many issues did not need to go to government. However, where relationships with central government were required, there were important points of influence. Clearly the Waitangi Tribunal served as an important vehicle for influencing outcomes. For others, experiences had not been positive with major difficulties in maintaining the provision of health and social services and maintaining basic institutions such as marae. In addition, Māori interviewed for this research noted that recent major political controversies, such as the debate around the Foreshore and Seabed Act 2004, provided important vehicles around which Māori have organised in a more public way to influence policy. These issues have contributed to the building of political support for representation in Parliament. Having key people both in the Parliament, and in government departments was also identified as an important strategy for influencing policy outcomes.

Most people interviewed in this project emphasised that many of the most effective forms of influence involved careful behind the scenes relationship building and conveying information directly to those most able to influence policy and shape decision-making, rather than high profile media or public engagement. Some participants, particularly those who were part of better resourced, more established organisations, talked of the competing pressures between being inside and outside the formal policy process. Commonly this was described as involving ethical and strategic decisions about whether to be “in the tent” or “outside the tent”.

Interviewees suggested that both stances could be appropriate on different occasions, with the former being considered to generally be more influential. Further, these commentators also noted that being “in the tent” often required that they not be publicly visible. This work was time and resource intensive and while the invisibility was critical to their effectiveness, it could make it difficult to keep members fully informed. This, in turn, created issues for them in keeping their membership actively involved in their work. Behind the scenes work also made it difficult to identify from the public record the role of non-profits in many policy and legislative changes. Interviewees from non-profits were also sometimes reluctant to identify the role they had played in particular policy change processes.

For organisations that primarily operated “within the tent”, keeping government informed about actions and building what were called champion projects were important. These representatives described the membership of their organisations as a broad church and reported that their focus was on achieving the desired change rather than on being publicly identified as major influencers. Even organisations that commonly operated from “within the tent” still found occasions when they needed to take a more public stance. A representative of one of these organisations noted that media activity could generate significant influence on the policy process. Some interviewees also commented that the sector was not always well co-ordinated in its efforts to shape policy and that at times they did not understand how to work effectively to secure desired policy changes. To assist advocacy coordination, 26 national non-profits have jointly funded ComVoices since 2005. This is an independent network which promotes the contribution of non-profits to society.

Examples of non-profit organisation influence

When asked to identify examples of non-profit influence on the policy process, participants commonly identified high profile instances of non-profit engagement. These were typically carefully organised public campaigns, involving significant numbers working over an extended period of time. Publicity around the time of the Government's attempts to introduce a carbon tax on farm animal emissions was strongly opposed by a key farming representative organisation, New Zealand Federated Farmers. During 2003 when the animal emissions levy popularly dubbed the fart tax was proposed, Federated Farmers in conjunction with a number of other organisations including the National Party (then in opposition), led a very public campaign that contributed to a decision to review and abandon the proposed levy.

Participants identified other examples of non-profit influence such as the work to strengthen various forms of social housing, the development of the New Zealand Disability Strategy, and some aspects of the development of policy responses to family poverty and family violence, elder abuse and problem gambling as well as the establishment of Nga Kohanga Reo[29]. The development of mental health policies, services and programmes were also identified as areas in which non-profit organisations had been actively involved. The growth and extension of early childhood services provides another significant example. The New Zealand Farm Forestry Association has lobbied the Government to encourage the planting of trees and on the of carbon credits, an issue that seems likely to change again as a result of the 2008 general election.

In the environmental area, local and national groups have shaped policy and brought environmental issues into the public domain. For instance, New Zealand Forest and Bird, a leading national environmental organisation, has influenced the return of pastoral lease land to the public estate. Marine reserves have also been set up partly in response to New Zealand Forest and Bird action. Similarly, an organisation structured around a specific campaign, the Save Happy Valley Coalition, occupied Happy Valley from January 2006 to prevent Solid Energy from open cast coal mining. While not successful in preventing mining, the group has raised the issue in the public mind and contributed to awareness of the need to protect native species. A similar lobby group, Save the Sounds, succeeded in reducing the speed of the ferries in the Marlborough Sounds. In Palmerston North, the Waitarere Environmental Care Association appealed Horizons Regional Council's decision on Fonterra's consent to allow the discharge of milk waste into the Manawatu River, which resulted in the allowable discharge volume being reduced.

In the area of industrial relations, union activity has clearly contributed to gains in the minimum code of employment rights and to changes in employment, health and safety laws as well as amendments to the Holidays Act. In early 2000 unions successfully campaigned for strengthened provisions in the Employment Relations Act for vulnerable workers such as commercial cleaners. Conversely, in 1991 the Government introduced the Employment Contracts Act, and despite strong union and community opposition, new legislation was implemented. The New Zealand Council of Trade Unions (CTU) has convened many CTU-Government forums, providing an opportunity for union members and delegates to meet directly with the Prime Minister and senior ministers.

[29] Kohanga reo are early childhood education facilities provided by iwi. They have a strong emphasis on promoting and developing Māori language and culture, with te reo (Māori language) as the exclusive medium of communication and learning.

More recently, the repeal and substitution in 2008 of Section 59 of the Crimes Act 1961, which removed from parents the statutory defence in the use of force for correction of children, highlighted clearly the capacity of non-profits to contribute to and influence major legislative change. Repeal of the legislation was given priority status by a large number of major non-profit social sector groups for more than a decade. These organisations worked collectively on raising public awareness and importantly, on securing political party support for their efforts to change the legislation.

While a large number of individuals were involved in supporting the campaign to reform the legislation, non-profit organisations such as Barnardos New Zealand, Plunket and Save the Children Fund played a significant role in spearheading and sustaining the initiative. EPOCH New Zealand, a local non-profit linked to an international network of similar organisations campaigning to remove legal protection for corporal punishment of children, provided a focus and developed resources and strategies in concert with a large number of other social service organisations during the decade-long campaign.

Equally, there were a number of other non-profit groups actively campaigning for the retention of the legislation. Many, but not all, of these groups were associated with evangelical churches, including significant church groups from the Pacific Islands communities. Section 59 of the Crimes Act was repealed and replaced in May 2007 (for a discussion of the campaign for reform see Wood et al 2008). Crucial to the effective change to the legislation was the extensive work with MPs undertaken by those groups seeking change, making good use of the current political environment in which ability to develop cross party support is crucial to effective lobbying. In 2009 the debate continued with lobbyists opposed to the law change gaining sufficient petition signatures to achieve a national referendum.

A number of interviewees, particularly those from less well-resourced and/or smaller non-profits, observed that the demands of sustaining service provision and lack of resources often made it difficult for them to actively participate in the policy process. This meant they were very unlikely to be “in the tent” with policy and decision-makers or involved in the early stages of policy development. These non-profits reported that their participation often came when the policy was already decided and state bureaucracies were seeking their views on policy implementation.

Some participants noted that the neo-liberal emphasis of the 1990s, in which a clear split was made between operational and policy activities, disenfranchised service delivery organisations from the policy development process. They argued that a key potential strength of non-profits, the ability to bring frontline experience to the policy process, was marginalised by the policy/operational demarcation. The focus on a narrow version of evidence-based policy was, participants suggested, another factor that restricts non-profits’ potential to make a contribution. Restrictive views within government about what constitutes adequate evidence have excluded the experience and knowledge of non-profit organisations from the policy process because the sector has a limited capacity to undertake formal research that might be considered to be evidence, given the limited definition that is sometimes used.

Furthermore, there has been a sense that government sometimes does not want to hear about frontline experience and/or to hear directly about policy outcomes. Other interviewees indicated that well-researched policy work did have an impact on government. Using the specific example of the Children’s Agenda, Wallace (2007), provides an interesting and insightful discussion of the processes and issues

involved in developing and implementing processes of participation in policy development.

There have been important efforts by government agencies in recent years to strengthen the engagement of non-profit organisations in various aspects of policy work through, for example, appointment to governance groups and consultative bodies. One of the key questions for non-profit organisations interviewed for this project was the extent to which that engagement extended to defining the agenda and setting the terms of reference, rather than providing advice at a later stage of the process.

The discussion here should not be read as assuming that the government sector should consult only with non-profit organisations over policy directions and decisions. While such organisations are a crucial part of the democratic process and provide an important vehicle for advocacy and citizen expression, and for feedback from frontline experience of policies, important questions exist on the extent to which they reflect public interest generally. Such questions are pivotal in ensuring that policy is not shaped by particular sets of interests or selected, unrepresentative opinion.

Capacity to influence

Advocacy is identified as an important function for non-profit organisations (Cody 1993). It is also an area that has the potential to cause significant tensions between the state and sector organisations. Furthermore, advocacy can also be constrained sector organisations because of legislative restrictions and legal decisions on charitable status for organisations whose primary function is to advocate. The remainder of this section considers two case studies of government responses to advocacy activities of non-profit organisations.

During the late 1990s after a series of reports from the umbrella organisation New Zealand Council of Christian Social Services that were critical of government policies, the National Government moved to shape the activities of social field umbrella groups by pressuring the three organisations (the New Zealand Council of Christian Social Services, New Zealand Council of Social Services and New Zealand Federation of Voluntary Welfare Organisations) to combine into one single entity or run the risk of losing the state funding that they received (Tennant 2008). The Government maintained that its concern was to rationalise and achieve efficiencies across these organisations. However, many believed that this was, in fact, an attempt to reduce the level of advocacy and opposition by non-profit organisations to government reforms, following publication of a critical evaluation of the key government funding agency by one of these umbrella groups.

For instance, Dialogue, the newsletter of the New Zealand Federation of Voluntary Welfare Organisations, devoted its December 1998 issue to reporting sector responses to the National Government's proposal (New Zealand Federation of Voluntary Welfare Organisations 1998, 1-11). A number of articles from member organisations identified their support of the Federation and highlighted the view that the motivation behind the Government proposal was an attempt to silence the three umbrella groups. Earlier in that decade, following a similar debate, government had ceased providing funding through the Community Organisation Grants Schemes (COGS) for groups that engaged in what was described as political advocacy, such as the Auckland Peoples Centre.

In 2003 the Ministry of Health became involved in a robust debate with health non-profits about the extent to which those groups receiving government funding could engage in advocacy work. This issue raised concerns more widely across the sector and in 2007 when background work was undertaken for this report, interviewees from a range of sectors referred to the concerns this issue had raised for them.

This issue was first raised as a result of questions in the House of Representatives about Ministry of Health contracts with non-profit organisations that included clauses specifically requiring the lobbying of MPs on legislation concerning anti-smoking. Maraku and Greer (2005, 3) identify the central issue these questions raised:

> Government agencies, like the MoH [Ministry of Health], cannot contract out functions they cannot legally carry out themselves. Public servants have obligations of "political neutrality". An example is that public servants cannot make a submission to a Select Committee unless invited, nor write directly to another Minister.

This led to a review of all health contracts, subsequently called the Hunn Brazier Report (sometimes the Brazier Hunn Report), which identified six non-profit health contracts that were of concern. It also recommended the development of more prescriptive guidelines for future contracts with non-profit organisations that explicitly excluded advocacy or lobbying activities (Brazier and Hunn 2003, 4), ensuring through those contracts that:

> services purchased are specific to information provision activities…[and] that the Ministry staff receive instruction and training on the avoidance of lobbying requirements and on substituting advocacy with more precise expectations.

The report also recommended that the Ministry of Health consult with non-profit organisations to ensure that consensus regarding their future freedom to function is achieved (Brazier and Hunn 2003, 4).

The report met a strong reaction from non-profit health organisations and the consultation recommended in the Hunn Brazier Report extended over some months. During this period, some sector organisations reported that clauses such as those recommended in the Hunn Brazier Report began to appear in contracts being negotiated from 2003 (Maraku and Greer 2005, 4), suggesting that the Ministry had in fact implemented the report despite still being engaged in consultation. The Health Promotion Forum of New Zealand/Runanga whakapiki ake i te hauora o Aotearoa (2004, 5), drawing on wide discussions with health sector non-profits, noted:

> It has been stated by the MoH that it is business as usual while further consultation and discussion takes place on this issue. Providers have reported variable interpretations from MoH officials on what activities they are able to undertake around advocacy.

From 2003 onwards, not only did this issue potentially constrain the ways in which non-profit organisations receiving government funding were able to operate in terms of achieving their own objectives, but it also constrained their capacity to respond to the state's needs. Gill Greer, from the Family Planning Association (FPA), explained to the Community Sector Roundtable in 2004 as follows (Greer 2004, 4):

> I have received a letter from a Select Committee asking FPA to make a submission on a Private Member's Bill on drug rape that would amend current legislation. The accompanying material states that no person has yet been convicted of drug rape in this country, yet in FPA's 30 clinics and 30 school and outreach clinics we see the victims. Isn't this something FPA, therefore,

> has some real understanding of, from our clients, together with our reading of the literature? Surely then FPA could contribute an informed submission both speaking on behalf of our clients who may well be too traumatised to speak for themselves, and in the hope of the development of a law that would be more effective in prosecuting and penalising the perpetrators? ...FPA should be able to do this… because we know, better than many, what the reality of this particular situation is, and would like to see it changed. It is a public health issue, and advocacy is central to the Ottawa Charter framework and, therefore, an internationally legitimate and credible Public Health activity in ensuring healthy public policy and supportive environments.

During 2004, the Ministry of Health attempted to develop internal contracting guidelines on this issue without success. Also during 2004 the Ministry of Health released a position paper on Advocacy in Public Health[30]. While the earlier Hunn Brazier Report had recommended removing the word advocacy from Ministry of Health contracts, the position paper recommended that the Ministry of Health continued to use the word in its contracting documents and provided justification for its continued usage.

In 2005 at the Health and Disability Sector NGO/MoH Forum in Christchurch, Dr Don Matheson, Deputy Director-General, Public Health, Ministry of Health, released a statement concerning the Ministry's position on lobbying and advocacy by non-profit organisations funded with Ministry contracts. This statement made the following points:

> What constitutes "acceptable" lobbying activity in one context may be unacceptable in another and the same applies to advocacy activity. Judgements around lobbying and advocacy are inevitably context dependent, including the level of trust that exists between parties; varying levels of experience; and the nature of the services being provided, the politics of the issue, and even the timing in relation to the electoral cycle. Overall, both the MoH draft statement and the alternatives proposed did not adequately address the Ministry's obligation to remain politically neutral.
>
> In light of the concerns with the current draft statement, it has been decided not to pursue the statement approach. Instead, the Ministry, following a suggestion from the working group, is working on including a new standard clause in MoH contracts that, among other things, states clearly that the Ministry, as a public service department, must comply with the convention of a politically neutral public service and other specified public service standards. This clause is still under development and is to be consulted with the central control agencies, eg SSC, Treasury and key agencies such as OAG [Office of the Auditor General] and OCVS (Matheson 2005, 2-3).

A fact sheet from the Charities Commission also provides some guidance for charities engaging in advocacy. It states that advocacy that is secondary to an organisation's charitable purpose will not prevent registration as a charity, but if advocacy for political or legislative change is the non-profit organisation's primary purpose, then registration as a charity will not be possible (Charities Commission 2007).

The issue touches on a key tension that exists in the relationship between non-profits and the government sector. State policy can make it more difficult or costly for

[30] http://www.hpforum.org.nz/resources/AdvocacyPositionPaper.pdf

organisations to take positions that are contrary to government policy or that may potentially be politically embarrassing to the Government. As Gauld (2004) notes, governments are sensitive to the potential of sector organisations and other entities that stand at arm's length to have this sort of impact. Even if not preventing any organisation from engaging in advocacy, the state can use its role as funder to discourage organisations from engaging in advocacy as suggested in the case of the social sector umbrella organisations discussed above. On other occasions, the state may wish to purchase advocacy from organisations. For instance, in the health field it has an interest in supporting organisations that seek to have an impact on public health.

Conclusion

The relationship between the non-profit sector and the government sector in New Zealand can be characterised as constantly evolving, developing and changing. While shaped by a range of legal and historical and political influences, there is significant ongoing work around how that relationship can be progressed and developed effectively, recognising the values, responsibilities and ethos of each of these two sectors. The historical, legal and policy relationships and the nature of society continue to reinforce the importance of the relationship for both parties, and for society generally. As the comparative international research demonstrates, there are unique national features to that relationship as well as aspects which have some similarity with experiences in other countries.

Iwi and iwi/Māori relationships with government are a vital ongoing consideration for the sector. These relationships are embedded in broader considerations of the implications of the Treaty of Waitangi for New Zealand's legal, constitutional and political framework and have important consequences for the non-profit sector. Iwi/Māori have direct relationships with the Crown as Treaty partners. In addition, iwi/Māori are involved in various non-profit activities (health, social services, community development, recreation for example). This means that ongoing work on the relationships between government and the non-profit sector has to engage with Māori on a range of different levels.

In reflecting on the literature and research for this exploration of the policy relationship, three issues stand out. First, there have been substantial changes in the relationship in the last two decades. These changes have been significantly influenced by the public sector reforms of the latter part of the 20th century and particularly by the development of contracting as a central feature of funding relationships. One of the critical outcomes of that development has been concerns about the impact of contracting on the independence and autonomy of the non-profit sector, raising questions as to the extent to which the sector is pursuing goals and objectives which it has established in contrast to meeting goals which are established by government.

Second, there have been important developments in the relationships in the last decade as government has moved towards a partnership model as the basis for its relationship with the non-profit sector. While these developments represent important changes, the nature, form and shape of partnerships remain unanswered questions. For many in the sector, partnerships mean an active role in establishing the key questions and issues, rather than engagement being limited to delivery and monitoring of outcomes. For government, there are critical questions here of accountability, responsibility and wider democratic participation.

Third, there is enormous diversity within the non-profit sector. This diversity is reflected in the size, coverage, capability, capacity and representativeness of sector organisations. Consequently some parts of the sector are much better placed than others to shape and influence their relationship with government. Similarly, there is considerable diversity within government in its relationships with the sector. Some areas of government are much further advanced in their work with the sector than others.

This diversity is reflected also in the research and literature about the sector. There has been much more work in social services, health, recreation and community development fields, for example, than elsewhere in the sector. Similarly, there is little detailed knowledge about the experiences of the relationships outside the major cities or among the country's diverse ethnic communities. These gaps could be usefully and productively explored in further research.

Appendix A: Methodology

The research for the paper followed the requirements of the Johns Hopkins University Comparative Non-profit Sector Project, Field Guide 7. The range of non-profit institutions within the scope of the project was in accordance with the International Classification of Non-profit Organisations.

Data was obtained from:

- a review of the available literature on government-sector relationships
- a series of interviews with key informants who were knowledgeable about the issues.

Interview participants were from government agencies, non-profit organisations, and specific population groups. Attempts were made to achieve a good geographical coverage of interview participants. To identify potential participants, the Committee for the Study of the New Zealand Non-profit Sector and the Office for the Community and Voluntary Sector were asked to suggest people who could provide informed comment on the issues raised in the field guide. We drew from this list a selection of 46 participants - more than twice the number recommended in the field guide - in an effort to enhance the spread of people covered. The results of these interviews are not representative in a statistical sense. Therefore, discussion avoids reporting on the numbers of people who said various things, but it does offer a good indication of the range of perspectives of key informants who have an overview of these issues.

The interview schedule was reviewed by the Office for the Community and Voluntary Sector and submitted, as required, to Johns Hopkins University for clearance. The project was judged to be a low-risk notification for ethical purposes, but nonetheless followed fundamental ethical principles in terms of protecting identities of interviewees and ensuring that they were not exposed to potential harm as a result of their participation.

Several public servants interviewed expressed concern about the possibility of repercussions from their participation and in order to protect their identities, they are grouped together in the list below. Public servants were drawn from central government, local authorities, crown entities and local offices of key ministries.

Interviewees drawn from the following fields and domains:

ICNPO Field	
Culture and recreation	5
Education and research	7
Health	8
Social services, and emergency/relief	11
Environmental/animal protection	5
Development and housing	8
Civic and advocacy groups	9
Philanthropic and other intermediaries	5
International organisations, aid and relief	3
Religious congregations and associations	6
Unions, business and professional associations	6
Tangata whenua governance organisations	6
Organisational Type	
Non-profit organisation	20
Non-profit umbrella	10
Statutory organisation	9
Organisations focused on population groups	
Māori	11
Pacific	3
Women	3
Other migrant	3
People with disabilities	3
Commentators	9
Geographical area	
North Island	28
South Island	18
Total interviewees	**46**

Note: Respondents were affiliated with organisations operating in multiple fields.

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