

# **Public Fundraising Symposium**

**Getting it Right:  
Regulation & Best Practice**

# Keeping Safe with Contracts

## What your organisation needs to consider when entering into a new supplier/charity contract

# KEEPING YOU SAFE ... WITH NEW CONTRACTS

What your organisation needs to  
consider when entering a new  
supplier/charity contract

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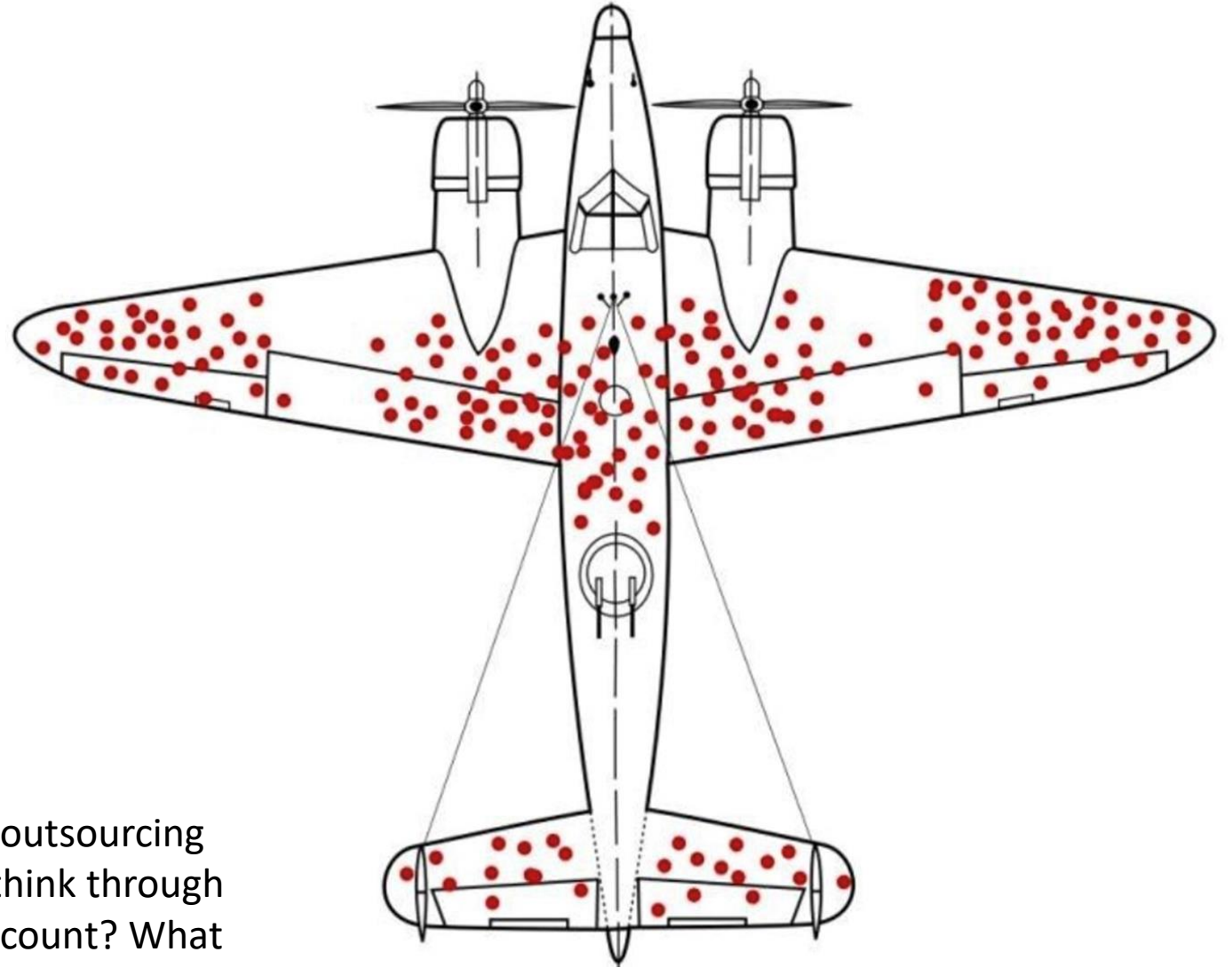
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# Keeping you safe...

- Preliminary matters
- Contracts: Key clauses
- Charities landscape
- Questions
- Resources

What are the key principles of contracts when outsourcing services to a third party, the key provisions to think through and how do you manage and hold others to account? What should you look for before engaging a third party?



# Preliminary Matters

## **Due Diligence Checklist:**

Parties should consider undertaking:

- Reference checking (consider the source of references too)
- Police & Credit Checks for Directors

## **Holding to account:**

Outline an agreed process around when and how to demonstrate accountability to support risk mitigation

- This could be around performance of a fundraising campaign when KPI's are not met, or when there are public complaints
- PFRA requires members to have a complaints policy and process



## **Contracts and the Key Provisions that You Should be Aware of**

- Counterparties
- Description of goods or services
- Specifications and quality
- Warranties and indemnities
- Limitations of liability
- Governing law
- Disputes
- Termination rights

# Contracts and the Key Provisions that You Should be Aware of

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## Description of goods or services:

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*The acquiring of billable pledges (donors) via a particular channel (i.e., residential, private sites, shopping centres, tele-fundraising or events)*

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*The purchasing of a data lead for the purposes of mailing or calling that lead*

# Contracts and the Key Provisions that You Should be Aware of

## Specifications and quality:

- Weekly targets or campaign targets
- Expectations to adhere to certain Codes of Conduct, rules, values, branding or industry/organisational requirements
- KPI's could focus on quality within a specific timeframe such as:
  - First debit failures less than xx%
  - Retention rates at xx% after xx months
  - % of donors to be within 'xxxx' demographic or geographical location
  - xx% must have received a welcome call,
  - Or have provided contact details and preferences



# Contracts and the Key Provisions that You Should be Aware of

## Warranties and indemnities:

What come back do parties have to hold the other accountable to if specifications or KPI's are not met?

*Some examples from our industry could be:*

- Is there an upfront discount or reimbursement to cover a % of work they know will not meet KIP's? or
- Is there a reconciliation process after a period of time (Clawback)? Or
- Is there an agreement to replace xx number of pledges to meet any short fall?

# Contracts and the Key Provisions that You Should be Aware of

## **Limitations of liability**

- Considerations around loss and damages to personal, property, reputation, privacy, data privacy & security, health and safety, etc...

## **Governing law**

- NZ! But also particularly consider around, employment, health & safety, privacy, child protection...
- Can also include any industry standards and self-regulatory bodies and the regulations that are required of members here too.

## **Termination rights**

- Dispute resolutions process?

# The landscape for Charities

- What are the key changes ahead?
- Incorporated Societies
- Charities Act
- XRB and disclosures.
- Privacy and security ensuring organisations are protecting donor data
- Messaging and accountability to donors, beneficiaries, boards etc.
- Employment contracts

# Incorporated Societies



- What is changing?
- What does this mean?
- New rules ...

# Bonus! Legal Structures & Governance

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- Key consideration: what are you trying to achieve?
- Company
- Charitable options: Trusts or Companies?
- Incorporated Societies
- Schedule 32 entities
- Hybrid structures?

Governance ...

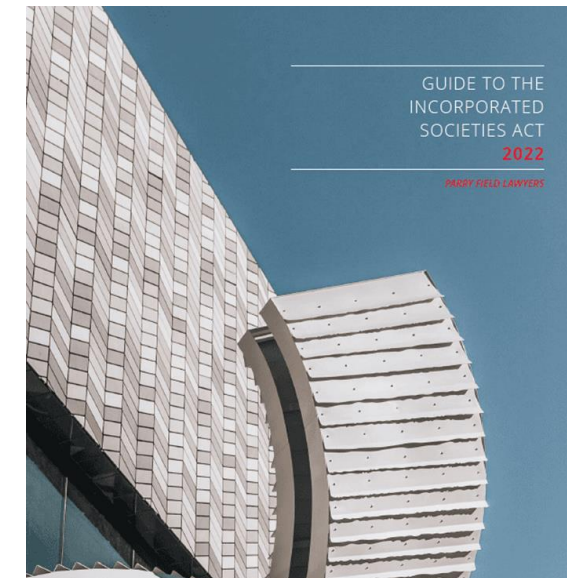
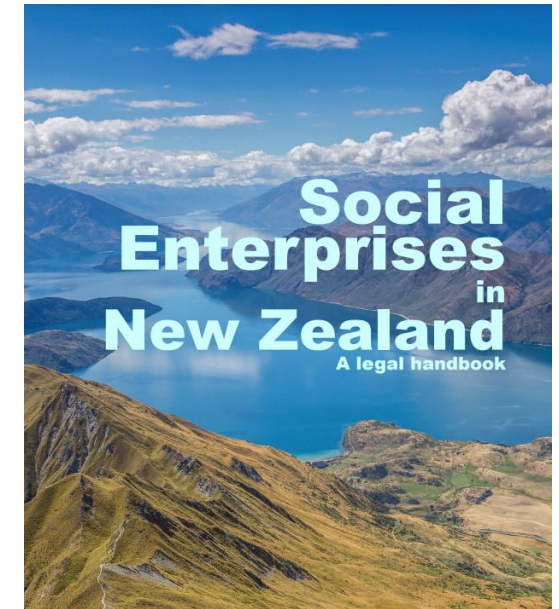
Pros and cons?

# Resources

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Here are some resources that may assist:

- Charities in NZ <https://www.parryfield.com/wp-content/uploads/2021/03/Charities-Legal-Handbook.pdf>
- Start-ups guide [https://www.parryfield.com/wp-content/uploads/2022/11/PARRY-FIELD-Start-Ups\\_final-17-Nov-2022.pdf](https://www.parryfield.com/wp-content/uploads/2022/11/PARRY-FIELD-Start-Ups_final-17-Nov-2022.pdf)
- Book on social enterprise: [https://www.parryfield.com/wp-content/uploads/2019/11/Social-Enterprises-in-NZ\\_Sтивен-Moe\\_978-0-473-41351-4.pdf](https://www.parryfield.com/wp-content/uploads/2019/11/Social-Enterprises-in-NZ_Sтивен-Moe_978-0-473-41351-4.pdf)
- Reimagining Business Book <https://drive.google.com/file/d/11YRswfJch1jzuCXKteNTxaK098spL0RC/view>
- 10 minutes on how to set up an impact driven organisation <https://seeds.libsyn.com/how-to-set-up-an-impact-driven-organisation-in-aotearoa>
- Seeds podcast with 345 episodes on inspiring people [www.theseeds.nz](http://www.theseeds.nz)
- Board Matters podcast on governance <https://www.iod.org.nz/news/articles/board-matters-podcast/#>
- Seeds Impact Conference [www.seedsconference.nz](http://www.seedsconference.nz)







# Board Matters

With Steven Moe



Institute of  
**DIRECTORS**  
NEW ZEALAND

# Questions?

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