

Charities Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Charities Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

This bill seeks to amend the Charities Act 2005 to improve transparency and accountability in the charitable sector. It would do so by adding some new compliance requirements to the Act, including:

- requiring charitable entities to regularly review their governance procedures
- giving the Charities Registration Board the ability to disqualify individual officers, rather than whole charities
- reducing financial reporting and compliance rules for smaller charitable entities.

The bill would also shift appeals to be heard by the Taxation Review Authority in the first instance, instead of the High Court. This is designed to make it easier for people to appeal regulatory decisions about charities.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Periodic review of governance procedures could be less frequent

Clause 20 of the bill would insert section 42G into the Charities Act. Proposed section 42G would require charitable entities to review their governance procedures annually. They would need to assess whether the procedures help them to achieve their purpose and comply with the requirements of the Act.

We consider that annually is too frequent for a review of governance procedures. We recognise that many entities operate solely with volunteer labour, which could make compliance with the annual review requirement onerous. Therefore, we recommend amending clause 20 to change the review frequency from annually to at least every 3 years. We consider that this would strike the right balance between the need to review the procedures, but not being burdensome.

Definition of the term “officer” is too broad

Clause 4(1) would amend section 4(1) of the Act to change the definition of “officer” to include anyone who is able to exercise significant influence over the entity. It would be possible for people in operational positions, such as managers, to be considered officers under the bill.

“Significant influence” is a subjective term, which could make defining an officer and subsequent compliance with the Act difficult. Submitters expressed concerns that the definition of officer was overly broad, and would capture people it should not. Some thought that the definition could unintentionally capture administrators and operational staff with no delegated powers. We agree that the definition of officer should be more precise, and that it should only capture those people who exert influence over the strategic, financial, or operational decisions of a charity. This would mean that people who have delegated powers to make significant financial or strategic decisions, such as chief executives, should be counted as officers.

We recommend amending clause 4(1)(a) of the bill to define an officer as a person who holds a position within the entity and is able to exercise significant influence over substantial decisions. Our amendment would also define an officer as a person who has powers conferred on them that would otherwise fall on the trustees, board, or governing body of the entity. Such a person would be captured regardless of whether they hold a position in the entity. We consider that this amendment would sufficiently clarify which persons are intended to be captured by the definition of officer, and would make compliance easier for entities.

Consultation on best-practice guidance should be more clearly defined

Clause 6 of the bill would insert section 12A into the Charities Act. Proposed section 12A would require the chief executive of the Department of Internal Affairs to consult certain people before issuing significant guidance on complying with the Act. As introduced, proposed section 12A would require the chief executive to consult persons or organisations considered to be “representative of the interests of charitable entities”.

We believe that the requirement for consultation should allow for flexibility. Whether public consultation or targeted consultation is best is dependent on the circumstances. We also think that consultation under proposed section 12A should be subject to the chief executive’s discretion. Greater flexibility would ensure that consultation is meaningful and helpful for developing guidance for compliance with the Act. We recommend amending clause 6 accordingly.

Privacy rights should be protected when issuing disqualification notices

Clause 17 would insert subpart 1A into the Act to set out, among other things, how officers could be disqualified. Disqualified officers would not be able to serve as officers of any charitable entity for a specified period of up to 5 years. Clause 36C(2) of subpart 1A would require the Charities Registration Board to publish disqualification notices on a publicly accessible website.

We note that disqualification notices could include personal information. We are concerned that the bill as introduced would not provide any safeguards for the publication of personal information of disqualified officers. We think that it should protect the privacy rights of disqualified officers, especially as it would require information about them to be published online. We therefore recommend inserting new clause 13A to amend section 25 of the Act. Our amendment would enable the chief executive to restrict public access to information about disqualified officers when requested by the charitable entity or officer, or on the chief executive’s own motion if they deem it necessary to protect the person’s safety or privacy.

Objecting to and appealing decisions of the chief executive

The Charities Act allows charitable entities to object to and appeal decisions of the Charities Registration Board. Objection to a decision entails taking that issue up with the decision-maker. Appeal means taking that decision to an external adjudicator, such as a court or tribunal, for settlement. The bill as introduced would enable charitable entities to appeal some decisions made by the chief executive.

We consider that charitable entities should also be able to object to and appeal a wider range of decisions made by the chief executive than the bill as introduced provided for. For example, as registrar of the charities register, the chief executive would be

able make changes to information in the register that could affect certain entities. This decision could substantially affect an entity.

Therefore, we recommend amending clause 23 to enable charitable entities to object to and appeal the following decisions of the chief executive:

- a decision to give a warning notice to a charitable entity or person
- a decision to amend the register to reflect any changes in the information that relates to a charitable entity
- a decision to amend the register to correct a mistake caused by any error or omission on the part of a charitable entity.

Appeals should be limited to the matters stated in the notice for both appellant and respondent

The Charities Act allows charitable entities to appeal certain decisions of the Charities Registration Board. For example, if the board removed a charitable entity from the charities register, in effect deregistering the entity, that entity could appeal the decision in the High Court. Clause 33 of the bill would empower the Taxation Review Authority to hear appeals.

Clause 26 of the bill would insert new Part 2A into the Act, which deals with appeals. Proposed Part 2A includes clause 58E, which specifies the grounds for an appeal. Clause 58E(a) would limit the appellant to the grounds stated in the notice of the decision by the board or chief executive. However, it would not provide a corresponding limit for the respondent. This would mean that the respondent could introduce new grounds for its decision at the hearing of the Taxation Review Authority.

We consider it inappropriate for appellants, but not respondents, to be limited to specific grounds for appeals. Therefore, we recommend amending clause 26 to limit both the appellant and the respondent to the grounds stated in the notice.

New Zealand National Party differing view

Submissions on the Charities Amendment Bill overwhelmingly call for the bill to be withdrawn. Submissions on the bill make it very clear that the fundamentals of the Charities Act are not sound, the definition of charitable purpose is not “working well” and does not meet its stated objective of making “practical changes to support charities to continue their vital contribution to community wellbeing, while ensuring that that contribution is sufficiently transparent to interested parties and the public”.

National Party members of the committee are concerned that the bill is another example of unnecessary and unhelpful piecemeal changes being imposed. The proposals in the bill have not been adequately thought through, and will usher in myriad further unintended consequences that will only place further unnecessary barriers in the way of charities, at a time when they are never more needed. DIA’s own regulatory impact statement speaks to inadequate consultation, inadequate problem definition, and a lack of evidence to support the proposals.

New Zealand National Party members of the committee consider the definition of “officer” should be limited to governance: that is, to the trustees of trusts, and members of the governing body of other charities, as per the original Charities Act. It is not appropriate for the Charities Act to hold people responsible for decisions they are not legally able to make.

Given the significant reputational implications of a banning order, New Zealand National Party members of the committee consider the Charities Registration Board should not be able to disqualify an officer without first having obtained an order of the court (as per sections 168–173 of the Incorporated Societies Act 2022).

National Party members of the committee consider it is incorrect to state that the bill “expands” the range of decisions that are able to be appealed, when the bill in fact limits charities to a mere handful of decisions made by charities services. Many submitters called for all decisions made under the Charities Act to remain appealable, as per the original Charities Act.

Charities have important legal duties to expend their resources solely on furthering their stated charitable purposes; there is no evidence of charities bringing appeals for frivolous or vexatious reasons, and even if such an appeal occurred, the courts have well-established processes to deal with them. The costs and stress of an appeal will naturally regulate the number of appeals that are made. Given the acknowledged need for more transparency and accountability of decision-making under the Act, it is not appropriate for charities services to be able to exercise decision-making powers without charities having a corresponding ability to hold charities services properly accountable for them.

New Zealand National Party members of the committee also consider it is critical that charities are given the choice of appealing to either the Taxation Review Authority, or the High Court, as per every other citizen able to appeal to the TRA. It is not reasonable to require charities to incur the additional cost and uncertainty of having to apply to the TRA for leave to appeal to the High Court, and it is not reasonable to require charities filing concurrent judicial review proceedings to file in two separate courts (as judicial review proceedings must be filed in the High Court). The ability to commence proceedings in the High Court as of right is also important for preserving charities’ ability to appeal to the Supreme Court.

New Zealand National Party members of the committee consider that requiring a 3-yearly review of governance procedures creates more unnecessary red tape for charities, contrary to the stated objective of the bill. Attempts to create blunt, prescriptive, one size fits all, legislative rules do not work in the area of charities law, because they inevitably fail to accommodate the diversity of human endeavour; an increasing array of exceptions or exemptions then becomes needed, which in turns leads to unnecessary complexity that diverts charities’ limited resources away from their charitable purposes, and encourages an industry of professional advisers to help charities navigate. The reality is that charities should be able to undertake their own internal review processes on a timeframe that makes sense for them. The Charities Act should articu-

late one simple overarching fiduciary duty and be applicable to all registered charities, irrespective of their underlying legal structure.

New Zealand National Party members of the committee also consider that clause 8 should be removed from the bill. It is not appropriate to codify charities services' controversial practice of conducting "charitable purpose reviews" in advance of reviewing the definition of charitable purpose itself.

New Zealand National Party members of the committee recommend that clause 19 is deleted from the bill. The XRB has already considerably simplified the tier 4 standard and that is the place to address the issue of financial reporting by small charities, not a broad Henry VIII exemption power. As noted by submitters, when the DIA comes to draft the regulations specifying the minimum financial information required, it will discover that the information must be much the same as the current Tier 4 requirements. Clause 19 in fact misleads small charities into thinking their obligations will be reduced when that will likely not be the case.

New Zealand National Party members of the committee believe that increasing the number of board members, and implementing a new "objections" process that will require a significant investment of resource and government funding, will only "throw good money after bad", wasting precious taxpayer funds in the middle of a cost-of-living crisis.

Independence of decision-making is a key fundamental issue not addressed by the bill. An independent charitable sector is as critical to democracy as free and fair elections, an independent judiciary, and a free press. The lack of independence underpins the "poor perceptions" of charities services referred to in the explanatory note to the bill. It also prevents the charitable sector from having confidence in the current structure, which increases friction and therefore cost, as predicted by the 2002 working party on registration, reporting, and monitoring of charities. New Zealand National Party members of the committee believe the bill is fundamentally flawed and is not remediable by further "tinkering". We support the call by the majority of the charitable sector submitters for the bill to be withdrawn, and for the Labour Government to honour its manifesto commitment to carry out a proper, first principles, post-implementation review of the Act, and for it to be carried out independently of DIA.

Appendix

Committee process

The Charities Amendment Bill was referred to the committee on 28 September 2022. We invited the Minister for the Community and Voluntary Sector to provide an initial briefing on the bill. She did so on 9 February 2023.

We called for submissions on the bill with a closing date of 9 December 2023. We received and considered submissions from 95 interested groups and individuals. We heard oral evidence from 28 submitters in Wellington.

We received advice on the bill from the Department of Internal Affairs. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 42AB.

Committee membership

Angie Warren-Clark (Chairperson)

Karen Chhour

Dr Liz Craig

Dr Emily Henderson

Anahila Kanongata'a

Ricardo Menéndez March

Terisa Ngobi

Maureen Pugh

Hon Louise Upston

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Priyanca Radhakrishnan

Charities Amendment Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
	Part 1	
	Amendments to Charities Act 2005	
3	Principal Act	4
4	Section 4 amended (Interpretation)	4
5	Section 8 amended (Establishment, functions, duties, and powers of Board)	5
6	New section 12A inserted (Chief executive to consult on significant guidelines or recommendations)	5
	12A Chief executive to consult on significant guidelines or recommendations	5
7	Section 13 amended (Essential requirements)	5
8	New section 13A inserted (Charitable entity to remain qualified for registration)	5
	13A Charitable entity to remain qualified for registration	6
9	Section 15 amended (Name of entity)	6
10	Section 16 repealed (Qualifications of officers of charitable entities)	6
11	Section 18 amended (Chief executive to consider application)	6
12	Section 19 amended (Board to decide application for registration)	6
13	Section 24 amended (Contents of register)	6
<u>13A</u>	<u>Section 25 amended (Chief executive may allow information and documents to be omitted or removed from register and may restrict public access to information and documents)</u>	<u>7</u>
14	Section 26 amended (Amendments to register)	7

Charities Amendment Bill

15	Section 31 amended (Deregistration of charitable entity from register)	7
16	Sections 33 to 36 repealed	8
17	New subpart 1A of Part 2 inserted	8
Subpart 1A—Officers of charitable entities		
36A	Role of officer of charitable entity	8
36B	Qualifications of officers of charitable entities	8
36C	Board may disqualify officer	9
36D	Effect of disqualification of officer	9
<u>17A</u>	<u>Section 39 amended (Duty to telephone and Internet collectors to disclose registration number on request)</u>	<u>10</u>
18	Section 41 amended (Duty to prepare annual return)	10
19	New sections 42AB and 42AC inserted	10
42AB	Meaning of minimum financial information and qualifying financial entity	10
42AC	Chief executive may exempt class of qualifying charitable entities from providing financial statements	10
20	New section 42G and cross-heading inserted	11
<i>Duty to review governance procedures</i>		
42G	Duty to review governance procedures	11
21	Section 49 repealed (Board to observe rules of natural justice)	11
22	Section 55 amended (Board may publish details of possible breach, possible serious wrongdoing, and other matters)	11
23	New sections 55A to 55E and cross-heading inserted	11
<i>Objections to decisions of Board and chief executive</i>		
55A	Interpretation	11
55B	Notice of intention to make decision	12
55C	Objection to intended decision	12
55D	Decision maker's duty if objection received	12
55E	Decision maker to observe rules of natural justice	13
24	Section 56 amended (Notices)	13
25	Section 57 amended (Service of notices)	13
26	New Part 2A inserted	13
Part 2A		
Appeals		
<i>Appeals to Authority</i>		
58A	Right of appeal to Authority against decisions of Board and certain decisions of chief executive	14
58B	Period for bringing appeal	14
58C	Commencement of appeal	15
58D	Notice of defence	15
58E	Grounds of appeal and burden of proof	15

Charities Amendment Bill

58F	Authority may strike out appeal	16
58G	Authority may regulate its procedure	16
58H	Procedure at hearing of appeal	16
58I	Evidence	16
58J	Determination on papers	16
58K	Power to proceed if party fails to attend	17
58L	Use of electronic facilities	17
58M	Sittings of Authority to hear appeals	17
58N	Powers of Authority in determining appeals	17
58O	Decisions of Authority	18
58P	Authority may award costs to successful appellant	18
58Q	Authority may make interim order pending determination of appeal	19
58R	Right of appeal against decision refusing interim order	19
58S	Contempt of Authority	19
58T	Application of District Court Rules 2014	20
58U	Practice notes	20
58V	Authority must notify Attorney-General of bringing of appeal	20
	<i>Appeals to High Court</i>	
58W	Right of appeal to High Court	20
	<i>Authority may state case</i>	
58X	Authority may state case for High Court	20
27	Sections 59 to 61 <u>and cross-heading</u> repealed	21
28	Section 73 amended (Regulations)	21
29	Schedule 1AA amended	21
30	Schedule 2 amended	21

Part 2

Consequential amendments to other Acts

Amendments to Taxation Review Authorities Act 1994

31	Principal Act	21
32	Section 2 amended (Purpose of Act)	21
33	Section 13 amended (Functions of an Authority)	22
34	Section 13A amended (General jurisdiction of Authorities)	22

Amendment to Incorporated Societies Act 2022

35	Principal Act	22
36	Section 47 amended (Qualifications of officers)	22

Schedule

New Part 2 inserted into Schedule 1AA

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Charities Amendment Act **2022**.

2 Commencement

- (1) Sections **4, 6, 7, 8, 10, 11, 12, 15, 16, 17, 20, 35, and 36** come into force 5
3 months after the date on which this Act receives the Royal assent.
- (2) Sections **21, 22, 23, 26, 27, 31, 32, 33, and 34** come into force 12 months
after the date on which this Act receives the Royal assent.
- (3) The rest of this Act comes into force on the day after the date on which it
receives the Royal assent. 10

Part 1

Amendments to Charities Act 2005

3 Principal Act

This Part amends the Charities Act 2005.

4 Section 4 amended (Interpretation) 15

- (1) In section 4(1), replace the definition of **officer** with:

officer, in relation to a charitable entity,—

~~(a) means a person who is able to exercise significant influence over the management or administration of the entity;~~

~~(b) includes, but is not limited to,—~~ 20

~~(i) in relation to the trustees of a trust, any of those trustees;~~

~~(ii) in relation to any other entity, a member of the board or governing body of the entity if it has a board or governing body;~~

(a) means a person occupying a position in the entity who is able to exercise significant influence over substantial decisions of the entity including, but not limited to,— 25

(i) in relation to a trust, the trustees of the trust; and

(ii) in relation to any other entity, a member of the board or governing body of the entity (if it has a board or governing body); and

(iii) a person occupying any other position (for example, a chief executive or treasurer) if that position enables them to exercise such influence; 30

(b) includes a person who has powers conferred on them to make decisions that would otherwise fall on the trustees, the board, or the governing

- body of the entity (regardless of whether the person holds a position in the entity):
- (ba) includes any class or classes of persons declared by regulations to be officers for the purposes of this Act:
- (c) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act 5
- (2) In section 4(1), definition of **serious wrongdoing**, replace paragraph (c) with:
- (c) an act, omission, or course of conduct that constitutes an offence punishable by imprisonment for a term of 2 years or more or imprisonment for life; or 10
- (3) In section 4(1), insert in its appropriate alphabetical order:
- Taxation and Charities Review Authority**, or **Authority**, means an Authority established or deemed to be established under the Taxation Review Authorities Act 1994
- 5 Section 8 amended (Establishment, functions, duties, and powers of Board)** 15
- In section 8(1), replace “3” with “5”.
- 6 New section 12A inserted (Chief executive to consult on significant guidelines or recommendations)**
- After section 12, insert: 20
- 12A Chief executive to consult on significant guidelines or recommendations**
- The chief executive must consult ~~persons or organisations that the chief executive considers to be representative of the interests of charitable entities~~ persons or representatives of persons that the chief executive considers reasonable to consult before issuing significant guidelines or recommendations on the best practice to be observed by charities and persons concerned with the management or administration of charities. 25
- 7 Section 13 amended (Essential requirements)**
- Replace section 13(1)(d) with:
- (d) all of the officers of the entity are qualified to be officers of a charitable entity under ~~sections 34(4), 36B, and 36G~~; and
- (e) at any time, at least 1 officer of the entity is 18 years of age or older. 30
- 8 New section 13A inserted (Charitable entity to remain qualified for registration)**
- After section 13, insert: 35

13A Charitable entity to remain qualified for registration

- (1) Every charitable entity must remain qualified for registration as a charitable entity at all times.
- (2) To remain qualified for registration, a charitable entity must,—
 - (a) in the case of the trustees of a trust, remain of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes: 5
 - (b) in the case of a society or an institution,—
 - (i) be maintained exclusively for charitable purposes; and
 - (ii) not be carried on for the private pecuniary profit of any individual: 10
 - (c) have as its officers only persons qualified to be officers of a charitable entity under **sections ~~34(4)~~ 36B, and 36G**:
 - (d) have and maintain rules.

9 Section 15 amended (Name of entity)

15

In section 15(e), replace “in the opinion of the Board, the name is not” with “if the Board decides that the name is not”.

10 Section 16 repealed (Qualifications of officers of charitable entities)

Repeal section 16.

11 Section 18 amended (Chief executive to consider application)

20

- (1) In section 18(3)(c)(ii), replace “20 working days” with “2 months”.
- (2) In section 18(3A)(a), replace “20 working days” with “2 months”.

12 Section 19 amended (Board to decide application for registration)

- (1) Repeal ~~sub~~section 19(4).
- (2) In ~~sub~~section 19(5), replace “acting under subsection (4)” with “declining an application under this section”. 25
- (3) After ~~sub~~section 19(5), insert:
- (6) If the Board declines an application under this section, it must, as soon as practicable, publish its decision and the reasons for it on a publicly accessible Internet site maintained by or on behalf of the Board. 30

13 Section 24 amended (Contents of register)

After section 24(2), insert:

- (2A) The register may contain any other information or documents provided by a charitable entity that support the purpose of the register.

13A Section 25 amended (Chief executive may allow information and documents to be omitted or removed from register and may restrict public access to information and documents)

Replace section 25(2) with:

- (2) The chief executive may, on a request from a charitable entity or an individual referred to in **paragraph (b) or (c)** or on the chief executive's own motion, prevent or restrict public access to any information that relates to—
- (a) the entity if the chief executive considers, in the public interest, that public access to that information should be prevented or restricted; or
 - (b) an individual if the chief executive considers that public access to that information would be likely to prejudice the privacy or personal safety of any person; or
 - (c) an individual if the individual is—
 - (i) a protected person in relation to a protection order under the Family Violence Act 2018; or
 - (ii) a person for whose benefit a suppression provision or order applies under any legislation.

14 Section 26 amended (Amendments to register)

After section 26(b), insert:

- (ba) to correct a mistake caused by any error or omission on the part of a charitable entity that the chief executive is satisfied was an honest and genuine mistake or omission; or

15 Section 31 amended (Deregistration of charitable entity from register)

(1) After section 31(1), insert:

- (1A) The chief executive may recommend to the Board that an entity be deregistered as a charitable entity if the chief executive is satisfied that there are grounds under section 32 for the charity to be removed from the register.

(2) Replace section 31(4) with:

- (4) The Board may, if it has removed an entity from the register, make an order that an application for the re-registration of the entity as a charitable entity must not be made before the expiry of a specified period.

(3) After section 31(4), insert:

- (5) If the Board directs a notice under ~~section 31~~ **subsection (2)(a)** to be registered, it must, as soon as practicable, publish the following on a publicly accessible Internet site maintained by or on behalf of the Board:
- (a) the notice; and
 - (b) the reasons for the notice; and
 - (c) any order made under ~~section 31~~ **subsection (4)**.

16 Sections 33 to 36 repealed

Repeal sections 33 to 36.

17 New subpart 1A of Part 2 inserted

After section 36, insert:

Subpart 1A—Officers of charitable entities		5
36A	Role of officer of charitable entity	
	The role of an officer of a charitable entity includes assisting the entity to—	
	(a) deliver its charitable purpose; and	
	(b) comply with its obligations under this Act or any other enactment.	
36B	Qualifications of officers of charitable entities	10
(1)	A person who is not disqualified by this section or section 36C is qualified to be an officer of a charitable entity.	
(2)	The following persons are disqualified from being officers of charitable entities:	
(a)	an individual who is an undischarged bankrupt:	15
(b)	an individual who is under the age of 16 years:	
(c)	an individual who, or a body corporate that, has been convicted of either of the following and has been sentenced for the offence within the last 7 years:	
(i)	a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961):	20
(ii)	an offence under section 143B of the Tax Administration Act 1994:	
(d)	an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:	25
(e)	an individual who is subject to a banning order under subpart 7 of Part 4 of the Incorporated Societies Act 2022:	
(f)	an individual who is subject to a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:	30
(g)	a body corporate that is being wound up, is in liquidation or receivership, or is subject to statutory management under the Corporations (Investigation and Management) Act 1989:	35

	(h) an individual who has been convicted of an offence relating to the financing of terrorism under the Terrorism Suppression Act 2002, whether in New Zealand or elsewhere:	
	(i) in relation to any particular entity, an individual who, or a body corporate that, does not comply with any qualifications for officers contained in the rules of that entity.	5
(3)	Subsection (2) does not apply to an officer of an entity if that officer was appointed, under an Act, by the Governor-General, by the Governor-General in Council, or by a Minister.	
(4)	The Board may waive the application of any of the disqualifying factors set out in subsection (2)(a) to (h) in relation to an officer of that entity.	10
(5)	The waiver may be granted on any terms or conditions that the Board thinks fit.	
(6)	If the Board waives the application of a disqualifying factor set out in subsection (2)(a) to (h) , the officer to whom the waiver relates must not be treated as being disqualified from being an officer of a charitable entity in relation to the entity by reason of the application of that disqualifying factor.	15
(7)	If the Board decides to exercise a power under subsection (4) , it must direct the chief executive to give the charitable entity written notice of the decision.	
36C	Board may disqualify officer	
(1)	The Board may, by notice, disqualify an officer of a charitable entity for a specified period that does not exceed 5 years if—	20
	(a) the officer has engaged in serious wrongdoing in connection with the entity; or	
	(b) the officer has failed significantly or persistently to meet their obligations under this Act or any other enactment.	25
(2)	As soon as practicable after issuing a notice under this section, the Board must publish the notice on a publicly accessible Internet site maintained by or on behalf of the Board.	
(3)	In this section and section 36D , an officer of a charitable entity includes a person who was an officer of an entity that has been deregistered as a charitable entity under section 31.	30
36D	Effect of disqualification of officer	
(1)	A person disqualified from being an officer of a charitable entity under section 36B or 36C may not be an officer of any charitable entity while they are disqualified.	35
(2)	Disqualification of an officer of a charitable entity under section 36B or 36C does not, unless otherwise provided for, affect the disqualified officer's role or functions under any other Act or rule of law.	

17A Section 39 amended (Duty to telephone and Internet collectors to disclose registration number on request)

In section 39, delete “by means of telephone or the Internet.”.

18 Section 41 amended (Duty to prepare annual return)

Replace section 41(2)(b) with:

- (b) be accompanied by—
- (i) a copy of the financial statements of the charitable entity (or, in the case of section 46(1A)(b), of each entity that forms part of the single entity) for the most recently completed accounting period (unless an exemption under **section 42AC(1)** applies); and
 - (ii) the fee prescribed by regulations for the application (if any).

19 New sections 42AB and 42AC inserted

After section 42A, insert:

42AB Meaning of minimum financial information and qualifying financial entity

- (1) In this section and **section 42AC**,—

minimum financial information means financial information prescribed by regulations, and may include information about a charitable entity’s income, expenditure, assets, liabilities, mortgages, charges, other security interests, related party transactions, and donations

qualifying charitable entity means a charitable entity whose total assets and total operating expenditure both remain at all times below the maximum financial thresholds prescribed by regulations made on the recommendation of the Minister

- (2) Before recommending the making of regulations prescribing maximum financial thresholds for the purposes of the definition of qualifying charitable entity in **subsection (1)**, the Minister must have regard to the purpose of this Act.

- ~~(3) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

42AC Chief executive may exempt class of qualifying charitable entities from providing financial statements

- (1) The chief executive may, by notice, exempt a class of qualifying charitable entities from complying with **section 41(2)(b)**.

- (2) Before granting an exemption under **subsection (1)**, the chief executive must have regard to the purpose of this Act.

- (3) A qualifying charitable entity that is exempt from complying with **section 41(2)(b)** must, when it sends or delivers its annual return to the chief execu-

tive, report to the chief executive in the form (if any) prescribed by the chief executive on its minimum financial information.

- (4) An exemption granted under **subsection (1)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

20 New section 42G and cross-heading inserted

5

After section 42F, insert:

Duty to review governance procedures

42G Duty to review governance procedures

- (1) A charitable entity must review its governance procedures (whether those are set out in its rules or elsewhere) ~~annually~~ at least every 3 years.
- (2) When conducting a review under **subsection (1)**, the charitable entity must consider whether its governance procedures—
- (a) ~~are current~~ are fit for purpose; and
 - (b) assist the charitable entity to achieve its charitable purpose; and
 - (c) assist the charitable entity to comply with the requirements of this Act.

10

15

21 Section 49 repealed (Board to observe rules of natural justice)

Repeal section 49.

22 Section 55 amended (Board may publish details of possible breach, possible serious wrongdoing, and other matters)

Repeal section 55(3).

20

23 New sections 55A to 55E and cross-heading inserted

After section 55, insert:

Objections to decisions of Board and chief executive

55A Interpretation

In sections **55B to 55E**,—

decision means—

- (a) the following decisions of the chief executive:
 - (i) a decision under section 25(1) to remove or omit from the register any information or documents that relate to a charitable entity:
 - (ia) a decision under section 26(a) to amend the register to reflect any changes in the information that relates to a charitable entity;
 - (ib) a decision under **section 26(ba)** to amend the register to correct a mistake caused by any error or omission on the part of a charitable entity;

25

30

- (ii) a decision on an application by an entity for approval to change its balance date under section 41(5)(b):
 - (iii) a decision on an application by an entity under section 43 to grant, vary, or revoke an exemption:
 - (iv) a decision on a request by an entity under section 44(1) to treat the entity and 1 or more affiliated or closely related entities as forming part of a single entity; ~~and;~~ 5
 - (v) a decision to give a warning notice to a charitable entity or person under section 54(2); and
 - (b) any decision of the Board under this Act 10
- decision maker** means the Board or chief executive, whichever applies.

55B Notice of intention to make decision

- (1) Before the decision maker makes a decision, they must give notice of the matters set out in **subsection (2)** to the person who or entity that is the subject of the decision. 15
- (2) That notice must specify—
 - (a) the name of the person or entity; and
 - (b) where relevant, the registration number of the entity; and
 - (c) the decision that the decision maker intends to make; and
 - (d) the grounds under this Act for the intended decision; and 20
 - (e) the date by which an objection to the intended decision must be received by the decision maker, which must be no later than 2 months after the date of the notice.

55C Objection to intended decision

- The person who or entity that is the subject of the intended decision may send or deliver to the decision maker an objection to the intended decision on either or both of the following grounds: 25
- (a) that the grounds for the intended decision have not been satisfied:
 - (b) that, for any other reason, it would not be in the public interest to make the intended decision. 30

55D Decision maker's duty if objection received

- (1) If an objection to an intended decision is received by the decision maker on or before the date referred to in **section 55B(2)(e)**,—
 - (a) the decision maker must give the person or entity the opportunity to appear (whether in person or by electronic means) and be heard in relation to the intended decision and the objection; and 35

- (b) the decision maker must not proceed to make the intended decision unless they are satisfied that it is in the public interest to do so and that—
- (i) the grounds for the intended decision have been satisfied; or
 - (ii) the objection has been withdrawn; or
 - (iii) any facts on which the objection is based are not, or are no longer, correct; or
 - (iv) the objection is frivolous or vexatious.
- (2) If the decision maker proceeds to make a decision, the decision maker must give to the person or entity notice of—
- (a) the decision; and
 - (b) the grounds for the decision; and
 - (c) the person or entity’s right to appeal against the decision under **section 58A**.
- (3) The decision takes effect the day after the date of the notice referred to in **sub-section (2)**, unless another date (which may not be earlier than the date of the notice) is specified in the notice.
- 55E Decision maker to observe rules of natural justice**
- In considering whether to make a decision, the decision maker must observe the rules of natural justice.
- 24 Section 56 amended (Notices)**
- (1) In section 56(1), delete “by the chief executive”.
- (2) Replace section 56(1)(b) with:
- (b) it is signed by a member of the Board, the chief executive, or a person authorised by the Board or the chief executive for the purpose; and
- (3) In section 56(2), replace “the chief executive” with “a member of the Board or the chief executive”.
- 25 Section 57 amended (Service of notices)**
- (1) In section 57, replace “chief executive” with “Board or the chief executive” in each place.
- (2) After section 57(1)(c), insert:
- (d) serving or giving the ~~information notice~~ in electronic form and by means of an electronic communication.
- 26 New Part 2A inserted**
- After section 58, insert:

Part 2A Appeals

Appeals to Authority

- 58A Right of appeal to Authority against decisions of Board and certain decisions of chief executive** 5
- (1) A person or an entity may appeal to an Authority against—
- (a) the following decisions of the chief executive:
- (i) a decision under section 25(1) to remove or omit from the register any information or documents that relate to a charitable entity:
- (ia) a decision under section 26(a) to amend the register to reflect any changes in the information that relates to a charitable entity; 10
- (ib) a decision under **section 26(ba)** to amend the register to correct a mistake caused by any error or omission on the part of a charitable entity;
- (ii) a decision on an application by an entity for approval to change its balance date under section 41(5)(b): 15
- (iii) a decision on an application by an entity under section 43 to grant, vary, or revoke an exemption:
- (iv) a decision on a request by an entity under section 44(1) to treat the entity and 1 or more affiliated or closely related entities as forming part of a single entity; ~~and;~~ 20
- (v) a decision to give a warning notice to a charitable entity or person under section 54(2); and
- (b) any decision of the Board under this Act.
- (2) An appeal does not operate as a stay of the decision appealed against. 25
- 58B Period for bringing appeal**
- (1) An appellant must lodge an appeal under **section 58A** with the Authority—
- (a) no later than 2 months after the date of the decision appealed against; or
- (b) within any further time that the Authority may allow if, on an application by the appellant, the Authority is satisfied that exceptional grounds outside the appellant's control prevented the appellant from lodging an appeal before the expiry of the period in **paragraph (a)**. 30
- (2) An appellant may make an application under **subsection (1)(b)** at any time before or after the expiry of the period in **subsection (1)(a)**.

58C Commencement of appeal

- (1) An appeal before an Authority must be commenced by filing a notice of appeal, together with the prescribed fee (if any), with the Authority.
- (2) A notice of appeal must be in a form approved by the chief executive of the Ministry of Justice after consulting all Authorities and any other parties the chief executive thinks appropriate. 5
- (3) Every notice of appeal must specify—
 - (a) the decision or the part of the decision to which the appeal relates; and
 - (b) the grounds of appeal in sufficient detail to fully inform the Authority and the respondent of the issues in the appeal; and 10
 - (c) the relief sought; and
 - (d) the appellant's address for service (which can be an email address or any other electronic address maintained by the appellant).
- (4) The decision maker must be named as a respondent in the appeal.
- (5) The appellant must serve a notice of appeal on all parties to the appeal. 15

58D Notice of defence

- (1) A respondent must file a notice of defence with the Authority no later than 2 months after being served with the notice of appeal.
- (2) A notice of defence must be in a form approved by the chief executive of the Ministry of Justice after consulting all Authorities and any other parties the chief executive thinks appropriate. 20
- (3) ~~A~~The respondent must serve the notice of defence on the appellant at the appellant's address for service.
- (4) Every notice of defence must specify—
 - (a) the grounds of defence in sufficient detail to fully inform the Authority and the appellant of the defence; and 25
 - (b) the respondent's address for service (which can be an email address or other electronic address maintained by the respondent).

58E Grounds of appeal and burden of proof

- (1) In an appeal,— 30
 - (a) the appellant is limited to the grounds stated in the notice of appeal; and
 - (aa) the respondent is limited to the grounds stated in the decision appealed against; and
 - (b) the burden of proof is on the appellant.
- (2) Despite **subsection (1)**, the Authority may, either on the application of the appellant or of its own motion, amend the grounds stated in the notice of appeal. 35

58F Authority may strike out appeal

An Authority may strike out an appeal, in whole or in part, if satisfied that it—

- (a) discloses no reasonable cause of action; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of process.

5

58G Authority may regulate its procedure

- (1) An Authority may regulate its procedure for the commencement, hearing, and determination of an appeal under this Act as it thinks fit, subject to—

- (a) this Act and any regulations; and
- (b) any practice notes issued under **section 58U**.

10

- ~~(2) Regulations may prescribe any procedure to be followed by an Authority.~~

58H Procedure at hearing of appeal

At the hearing of an appeal before an Authority, the parties—

- (a) may call evidence; and
- (b) must be given an opportunity to be heard either in person or by a person they have authorised to represent them (whether or not that person is a lawyer).

15

58I Evidence

- (1) An Authority may receive as evidence any statement, document, information, or matter that the Authority considers may assist the Authority to deal effectively with the appeal, whether or not it would be admissible in a court of law.

20

- (2) Subject to sections 53 to 67 of the Evidence Act 2006, an Authority may require a respondent to provide to the Authority and all parties to the appeal any statement, document, information, or matter that the Authority considers to be relevant to the decision under appeal.

25

- (3) An Authority may take evidence on oath.

- (4) An Authority may permit a person appearing as a witness before it to give evidence by providing a written statement and, if the Authority thinks fit, verifying it by oath.

30

58J Determination on papers

- (1) An Authority may determine an appeal on the papers if the Authority considers it appropriate.

- (2) Before doing so, the Authority must give the parties an opportunity to comment on whether the appeal should be dealt with in that manner.

35

58K Power to proceed if party fails to attend

- (1) If any party fails to appear or be represented at the hearing of an appeal before an Authority, the Authority may—
 - (a) adjourn the hearing; or
 - (b) determine the appeal in the absence of the party who failed to appear or be represented; or 5
 - (c) where it is the appellant who fails to appear or be represented, dismiss the appeal.
- (2) If an Authority determines or dismisses an appeal under **subsection (1)(b) or (c)** in the absence of any party, the Authority on the application of that party may, if the Authority thinks fit, grant a rehearing of the appeal or set down the dismissed appeal for a hearing. 10
- (3) An application for a rehearing or the setting down of a new hearing under **subsection (2)** must be made no later than 20 working days after the date of the Authority's determination or dismissal of the appeal. 15
- (4) If a rehearing is granted or a new hearing set down under **subsection (2)**, the determination of the Authority made on the initial hearing, or its dismissal of the appeal, ~~shall~~ immediately ceases to have effect.

58L Use of electronic facilities

Any sitting of an Authority may be conducted by telephone, audiovisual link, or other remote access facility if an Authority considers it appropriate and the necessary facilities are available. 20

58M Sitings of Authority to hear appeals

- (1) An Authority may sit to hear appeals under this Act at the times and locations that the Authority considers appropriate. 25
- (2) When considering where an appeal should be heard, the Authority may take into account the location and convenience of the parties.
- (3) An Authority may adjourn a sitting before or at the ~~the~~ time of the sitting.
- (4) If an Authority is absent or unable from cause to act, the Registrar of the Authority has the same powers as the Authority to adjourn a sitting. 30
- (5) All sittings of an Authority are open to the public, unless the Authority considers that a sitting should be conducted in private.

58N Powers of Authority in determining appeals

- (1) In determining an appeal under **section 58A**, an Authority may—
 - (a) confirm, modify, or reverse the decision of the Board or the chief executive or any part of the decision: 35
 - (b) exercise any of the powers that the Board or the chief executive could have exercised in relation to the matter to which the appeal relates.

- (2) Without limiting **subsection (1)**, the Authority may make an order requiring—
- (a) an entity to be registered in the register of charitable entities with effect from a specified date; or
 - (b) an entity to be restored to the register of charitable entities with effect from a specified date; or
 - (c) an entity to be removed from the register of charitable entities with effect from a specified date; or
 - (d) an entity to remain registered in the register of charitable entities; or
 - (e) an entity to be treated, or not to be treated, with 1 or more affiliated or closely related entities as forming part of a single entity; or
 - (f) an entity to be exempted, or not to be exempted, from compliance requirements from a specified date; or
 - (g) an entity to provide their annual return from a specified date; or
 - (h) information or documents that relate to an entity to be removed or omitted from, ~~included~~ included in, or restored to the register.
- (3) The specified date may be a date that is before or after the order is made.
- (4) The Authority may make any other order that it thinks fit.
- (5) An order may be made on any terms and conditions that the Authority thinks fit.
- 58O Decisions of Authority**
- (1) An Authority must give any decision under this Act in writing, and include reasons for the decision.
- (2) As soon as practicable after giving a decision determining an appeal, an Authority must publish the decision and reasons for the decision on a publicly available internet site maintained by or on behalf of the chief executive of the Ministry of Justice.
- (3) Despite **subsection (2)**,—
- (a) an Authority may withhold from publication information it considers appropriate (including, but not limited to, the name of the appellant or information that could identify the appellant); and
 - (b) an Authority is not required to publish a decision and reasons for the decision if it considers publication would not be in the public interest.
- 58P Authority may award costs to successful appellant**
- (1) An Authority may order the respondent to pay costs to a successful appellant.
- (2) The maximum amount of costs that may be awarded under **subsection (1)** is the amount of the filing fee to bring the appeal.

58Q Authority may make interim order pending determination of appeal

- (1) At any time before the final determination of an appeal under **section 58A**, an Authority may make an interim order requiring an entity—
 - (a) to be registered in the register of charitable entities with effect from a specified date; or 5
 - (b) to be restored to the register of charitable entities with effect from a specified date; or
 - (c) to remain registered in the register of charitable entities.
- (2) The specified date may be a date that is before or after the order is made.
- (3) At any time before the final determination of an appeal relating to a decision under section 55, an Authority may make an interim order preventing or restricting the exercise of a power by the Board under that section. 10
- (4) An interim order may be subject to any terms or conditions that the Authority thinks fit.
- (5) If an interim order is made under **subsection (1)**, the chief executive must— 15
 - (a) amend the register of charitable entities in accordance with the order as soon as practicable after receiving the order; and
 - (b) include a copy of the order in the register of charitable entities, unless the Authority orders otherwise.
- (6) To enable the chief executive to fulfil the duties imposed by this section, the Registrar of the Authority must send a copy of the order to the chief executive as soon as practicable. 20

58R Right of appeal against decision refusing interim order

If an Authority refuses to make an interim order under **section 58Q**, the person or persons who applied for the order may, within 1 month after the date of the refusal, appeal to the High Court against the decision. 25

58S Contempt of Authority

- (1) A person commits an offence if the person—
 - (a) wilfully insults or obstructs an Authority or any witness or officer of an Authority during a sitting of the Authority or while the Authority, a witness, or an officer is going to, or returning from, a sitting of the Authority; or 30
 - (b) wilfully insults or obstructs any person in attendance at a sitting of an Authority; or
 - (c) wilfully interrupts, or otherwise misbehaves at, a sitting of an Authority; or 35
 - (d) wilfully and without lawful excuse disobeys any order or direction of an Authority in the course of the hearing of any proceedings.

(2)	A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,000.	
(3)	An Authority may order the exclusion from a sitting of that Authority of any person whose behaviour, in the opinion of the Authority, constitutes an offence against subsection (1) , whether or not the person is charged with the offence, and any officer of the Authority or constable may take any steps that are reasonably necessary to enforce the exclusion.	5
58T	Application of District Court Rules 2014	
	To the extent that they are not inconsistent with this Act or regulations, the District Court Rules 2014 apply to the commencement, interlocutory steps, and conduct of proceedings in an Authority as if those proceedings were civil proceedings in the District Court.	10
58U	Practice notes	
(1)	All Authorities acting together may issue practice notes, to apply to all of them, in relation to appeals to an Authority under this Act.	15
(2)	The practice notes must not be inconsistent with this Act and are for the guidance of an Authority, officers of an Authority, and parties before an Authority.	
58V	Authority must notify Attorney-General of bringing of appeal	
	The Authority must notify the Attorney-General promptly of the bringing of any appeal to the Authority under this Act.	20
	<i>Appeals to High Court</i>	
58W	Right of appeal to High Court	
(1)	A party to an appeal under section 58A who is dissatisfied with the decision of an Authority under this Act on that appeal may appeal to the High Court.	
(2)	Every appeal under subsection (1) must be made by filing a notice of appeal in the appropriate registry of the High Court within 20 working days after the date of the decision appealed against or within any further time that the High Court allows.	25
(3)	On any appeal under subsection (1) , the High Court may make an order or a determination as it thinks fit.	30
(4)	Subject to this section, the procedure in respect of any appeal under this section must be in accordance with the rules of court.	
	<i>Authority may state case</i>	
58X	Authority may state case for High Court	
(1)	An Authority may, at any time, on the application of any party to the appeal or of its own motion, state a case for the opinion of the High Court on—	35

- (a) any question of law arising in respect of an appeal before the Authority:
- (b) whether the appeal should be heard by the High Court.
- (2) An Authority must give notice to the parties of the Authority's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed. 5
- 27 Sections 59 to 61 and cross-heading repealed**
 Repeal sections 59 to 61 and the cross-heading above section 59.
- 28 Section 73 amended (Regulations)**
- (1) Replace section 73(1)(g) with:
- (g) providing the procedure for appeals under this Act: 10
- (h) prescribing the fees to be paid in respect of the filing of an appeal to an Authority under this Act:
- (i) prescribing the circumstances in which any fees paid or to be paid in respect of the filing of an appeal under this Act may be refunded, remitted, or waived, in whole or in part: 15
- (j) providing for anything this Act says may or must be provided for by regulations:
- (k) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) In section 73(7), replace “chief executive” with “Board or the chief executive”. 20
- 29 Schedule 1AA amended**
 In Schedule 1AA,—
- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.
- 30 Schedule 2 amended** 25
 In Schedule 2, clause 2(1), replace “3” with “5”.

Part 2

Consequential amendments to other Acts

Amendments to Taxation Review Authorities Act 1994

- 31 Principal Act** 30
Sections 31 to 34 amends the Taxation Review Authorities Act 1994.
- 32 Section 2 amended (Purpose of Act)**
 Replace section 2(1) with:

- (1) The purpose of this Act is to—
- (a) re-enact the law contained in the Inland Revenue Department Act 1974 as it relates to Taxation Review Authorities; and
 - (b) provide that Taxation Review Authorities are to sit as a judicial authority for hearing and determining appeals under the Charities Act 2005. 5
- 33 Section 13 amended (Functions of an Authority)**
- In section 13, insert as subsection (2):
- (2) The functions of an Authority are also to sit as a judicial authority for hearing and determining appeals under the Charities Act 2005 (*see* **sections 58A to 58X** of that Act) in accordance with the provisions of that Act. 10
- 34 Section 13A amended (General jurisdiction of Authorities)**
- After section 13A(b), insert:
- (c) to hear and determine appeals under **sections 58A to 58X** of the Charities Act 2005.
- Amendment to Incorporated Societies Act 2022* 15
- 35 Principal Act**
- Section 36** amends the Incorporated Societies Act 2022.
- 36 Section 47 amended (Qualifications of officers)**
- In section 47(3)(d), replace “section 31(4)(b)” with “~~sections 36B and section 36C~~”. 20

Schedule

New Part 2 inserted into Schedule 1AA

s 29

	Part 2	
	Provisions relating to Charities Amendment Act 2022	5
3	Interpretation	
	In clause 4 <u>this Part</u> ,—	
	(a) Amendment Act means the Charities Amendment Act 2022	
	(b) principal Act means the Charities Act 2005.	
4	Provisions relating to decisions of Board or chief executive	10
	The principal Act, as in force before the commencement of this clause, continues to apply to the following as if the A <u>amendment</u> Act had not been enacted:	
	(a) an application for registration under section 17 made before the commencement of this clause; and	15
	(b) any process for the removal of an entity from the register where the chief executive issued a notice under section 33 before the commencement of this clause.	
5	<u>Certain proceedings, etc, in progress continue</u>	
(1)	<u>This clause applies to a proceeding that, immediately before the commencement of sections 26 and 27 of the amendment Act, is pending or in progress—</u>	20
	(a) <u>in the High Court, on an appeal under section 59 of the principal Act;</u>	
	(b) <u>in the Court of Appeal, on an appeal under section 60(5) of the principal Act.</u>	25
(2)	<u>A proceeding to which this clause applies may be continued and completed as if sections 59 to 61 of the principal Act had not been repealed by the amendment Act.</u>	
(3)	<u>To avoid doubt, section 60(5) of the principal Act applies in respect of a proceeding continued in the High Court under subclause (2).</u>	30

Charities Amendment Bill

Legislative history

21 September 2022

28 September 2022

Introduction (Bill 169–1)

First reading and referral to Social Services and Community
Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2023