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## Charities Act 2005

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Internal Affairs.**

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**1 Title**

This Act is the Charities Act 2005.

**2 Commencement**

- (1) Section 1, this section, and sections 11(4), 42, and 73 come into force on the day after the date on which this Act receives the Royal assent.
- (2) Part 1 (except section 11(4)), sections 62, 63, and 76, and the Schedule come into force on 1 July 2005.
- (3) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2(3): sections 69–71 brought into force, on 1 November 2006, by clause 2 of the Charities Act Commencement Order 2006 (SR 2006/300).

Section 2(3): Part 2 (except section 42), and sections 74 and 75 brought into force, on 1 February 2007, by clause 3 of the Charities Act Commencement Order 2006 (SR 2006/300).

Section 2(3): sections 64–68, and 72 brought into force, on 1 July 2008, by clause 4 of the Charities Act Commencement Order 2006 (SR 2006/300).

## Part 1

### Preliminary matters and functions relating to charities

Heading: amended, on 1 July 2012, by section 4 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### *Preliminary matters*

### 3 Purpose

The purpose of this Act is—

- (a) to promote public trust and confidence in the charitable sector:
- (b) to encourage and promote the effective use of charitable resources:
- (c) to provide for the registration of societies, institutions, and trustees of trusts as charitable entities:
- (d) to require charitable entities and certain other persons to comply with certain obligations:
- (e) to provide for the Board to make decisions about the registration and deregistration of charitable entities and to meet requirements imposed in relation to those functions:
- (f) to provide for the chief executive to carry out functions under this Act and to meet requirements imposed in relation to those functions.

Section 3: replaced, on 1 July 2012, by section 5 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**Board** means the board established by section 8

**charitable entity** means a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under this Act

**chief executive** means the chief executive of the department

**collector** means a person who, on behalf of a charitable entity, requests funds, canvasses for subscriptions, sells raffle or lottery tickets, or appeals for donations

**department** means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**document** has the meaning set out in section 2(1) of the Commerce Act 1986

**entity** means any society, institution, or trustees of a trust

**Inland Revenue Acts** has the meaning set out in section 3(1) of the Tax Administration Act 1994

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**officer**—

- (a) means, in relation to the trustees of a trust, any of those trustees; and
- (b) means, in relation to any other entity,—
  - (i) a member of the board or governing body of the entity if it has a board or governing body; and
  - (ii) a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive); and
- (c) includes any class or classes of persons that are declared by regulations to be officers for the purposes of this Act; but
- (d) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

**parent entity** has the meaning set out in section 44

**register** or **register of charitable entities** means the register of charitable entities established under section 21

**regulations** means regulations in force under this Act

**rules** means,—

- (a) in relation to the trustees of a trust, the rules, trust deeds, and instruments constituting, or defining the constitution of, that trust; and
- (b) in relation to any other entity, the rules, constitution, and instruments constituting, or defining the constitution of, that entity

**serious wrongdoing**, in relation to an entity, includes any serious wrongdoing of any of the following types:

- (a) an unlawful or a corrupt use of the funds or resources of the entity; or
- (b) an act, omission, or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity; or
- (c) an act, omission, or course of conduct that constitutes an offence; or
- (d) an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement

**single entity** has the meaning set out in section 44.

- (2) In this Act, unless the context otherwise requires, references to a person performing functions and exercising powers, or carrying out responsibilities, include carrying out duties.
- (3) An example used in this Act has the following status:
  - (a) the example is only illustrative of the provision to which it relates and does not limit the provision; and
  - (b) if the example and the provision to which it relates are inconsistent, the provision prevails.

Section 4(1) **Board**: inserted, on 1 July 2012, by section 6(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 4(1) **chief executive**: inserted, on 1 July 2012, by section 6(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 4(1) **Commission**: repealed, on 1 July 2012, by section 6(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 4(1) **department**: inserted, on 1 July 2012, by section 6(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 4(1) **officer** paragraph (b)(i): amended, on 25 February 2012, by section 4(2) of the Charities Amendment Act 2012 (2012 No 4).

Section 4(1) **officer** paragraph (b)(ii): amended, on 25 February 2012, by section 4(3) of the Charities Amendment Act 2012 (2012 No 4).

## 5 Meaning of charitable purpose and effect of ancillary non-charitable purpose

- (1) In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.
- (2) However,—
  - (a) 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; and
  - (b) a marae has a charitable purpose if the physical structure of the marae is situated on land that is a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (Maori Land Act 1993) and the funds of the marae are not used for a purpose other than—
    - (i) the administration and maintenance of the land and of the physical structure of the marae;
    - (ii) a purpose that is a charitable purpose other than under this paragraph.



- (2A) The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.
- (3) To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose of the trust, society, or institution, the presence of that non-charitable purpose does not prevent the trustees of the trust, the society, or the institution from qualifying for registration as a charitable entity.
- (4) For the purposes of subsection (3), a non-charitable purpose is ancillary to a charitable purpose of the trust, society, or institution if the non-charitable purpose is—
- (a) ancillary, secondary, subordinate, or incidental to a charitable purpose of the trust, society, or institution; and
  - (b) not an independent purpose of the trust, society, or institution.

Section 5(2A): inserted, on 25 February 2012, by section 5 of the Charities Amendment Act 2012 (2012 No 4).

## **6 Registration of trustees of trusts**

- (1) If an entity is, or consists of, the trustees of a trust, the name of that entity must, for the purposes of this Act, be treated as being—
- (a) the name under which the trustees are incorporated as a Board under the Charitable Trusts Act 1957 if the trustees are incorporated as a Board under that Act; or
  - (b) the name of the trust; or
  - (c) a name nominated by the trustees of the trust if the trust does not otherwise have a name.
- (2) The registration of the trustees of a trust as a charitable entity is not affected by—
- (a) 1 or more of the trustees ceasing to be a trustee of the trust; or
  - (b) the appointment of new trustees of the trust.
- (3) Subsections (1) and (2) do not limit sections 31 to 36, and 40.

## **6A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 6A: inserted, on 1 April 2015, by section 4 of the Charities Amendment Act 2014 (2014 No 63).

## **7 Act binds the Crown**

This Act binds the Crown.

*Board and chief executive*

Heading: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**8 Establishment, functions, duties, and powers of Board**

- (1) A Board comprising 3 members appointed by the Minister is established.
- (2) The Minister must notify in the *Gazette*—
  - (a) the names of the members of the Board; and
  - (b) the name of the chairperson of the Board.
- (3) The Board has the functions, duties, and powers relating to the registration and deregistration of charitable entities that are conferred or imposed on it by this Act.
- (4) In performing or exercising his or her functions, duties, or powers, each member of the Board—
  - (a) must act independently in exercising his or her professional judgement; and
  - (b) is not subject to direction from the Minister.
- (5) The Board must, subject to subsection (6), consider whether it could most efficiently and effectively perform or exercise any functions, duties, or powers itself or by delegating the functions, duties, or powers to the chief executive or some other person under section 9.
- (6) The chief executive must supply all secretarial and administrative services required to enable the Board to perform or exercise its functions, duties, and powers.
- (7) Schedule 2 applies to the Board and to the members and chairperson of the Board.

Section 8: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

*Nature of Commission*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**9 Board may delegate**

- (1) The Board may, either generally or particularly and by resolution, delegate any of its functions, duties, or powers under this Act to—
  - (a) the chief executive; or
  - (b) any member of the Board.
- (2) If functions, duties, or powers are delegated to the chief executive under subsection (1),—

- (a) the chief executive is not responsible to the Minister for the performance or exercise of those functions, duties, or powers but must act independently in exercising his or her professional judgement; and
  - (b) the chief executive may delegate those functions or powers to employees or holders of specified offices in the department under clauses 2 and 3 of Schedule 6 of the Public Service Act 2020.
- (3) No delegation under subsection (1) or (2)(b) affects the responsibility of the Board for the actions of any person acting under the delegation.
- (4) The Board must not make a delegation under this section unless satisfied that the delegation is consistent with section 8(5).
- (5) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

Section 9: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 9(2)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### *Commission's functions*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **10 Functions of chief executive**

The functions of the chief executive are—

- (a) to educate and assist charities in relation to matters of good governance and management, for example,—
  - (i) by issuing guidelines or recommendations on the best practice to be observed by charities and by persons concerned with the management or administration of charities;
  - (ii) by issuing model rules;
  - (iii) by providing information to charities about their rights, duties, and obligations under this Act and other enactments; and
- (b) to make appropriate information available to assist persons to make applications for registration under this Act; and
- (c) to receive and process applications for registration as charitable entities; and
- (d) to refer to the Board for its decision all applications for registration as charitable entities and proposals for deregistration as charitable entities; and

- (e) to ensure that the register of charitable entities is compiled and maintained; and
- (f) to receive, consider, and process annual returns submitted by charitable entities; and
- (g) to supply information and documents in appropriate circumstances for the purposes of the Inland Revenue Acts; and
- (h) to monitor charitable entities and their activities to ensure that entities that are registered as charitable entities continue to be qualified for registration as charitable entities; and
- (i) to inquire into charitable entities and into persons who have engaged in, or are engaging in, conduct that constitutes, or may constitute, a breach of this Act or serious wrongdoing in connection with a charitable entity; and
- (j) to monitor and promote compliance with this Act, including by taking prosecutions for offences against this Act in appropriate circumstances; and
- (k) to stimulate and promote research into any matter relating to charities, for example,—
  - (i) by collecting and disseminating information or research about charities:
  - (ii) by advising on areas where further research or information about charities should be undertaken or collected:
  - (iii) by entering into contracts or arrangements for research or information about charities to be undertaken or collected.

Section 10: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### *Membership of Commission*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **11 Status of entity does not affect performance of functions**

- (1) The Board and the chief executive may perform functions to which this section applies in relation to any charity regardless of whether the charity is registered as a charitable entity.
- (2) This section applies to the functions of the Board and the chief executive that relate to—
  - (a) the promotion of public trust and confidence in the charitable sector; or
  - (b) the encouragement and promotion of the effective use of charitable resources; or

- (c) the provision of education and assistance to charities in relation to matters of good governance and management; or
- (d) the stimulation and promotion of research into any matter relating to charities.

Section 11: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### *Annual meeting*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **12 Annual meeting with representatives of charitable entities**

- (1) The chief executive must hold at least 1 meeting in each year with representatives of charitable entities.
- (2) At each meeting, the representatives of charitable entities who attend the meeting must be given a reasonable opportunity to—
  - (a) ask questions concerning the operation of this Act; and
  - (b) make submissions on the operation of this Act to the chief executive.

Section 12: replaced, on 1 July 2012, by section 7 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **Part 2 Charitable entities**

### **Subpart 1—Register of charitable entities**

#### *Registration requirements*

## **13 Essential requirements**

- (1) An entity qualifies for registration as a charitable entity if,—
  - (a) in the case of the trustees of a trust, the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes; and
  - (b) in the case of a society or an institution, the society or institution—
    - (i) is established and maintained exclusively for charitable purposes; and
    - (ii) is not carried on for the private pecuniary profit of any individual; and
  - (c) the entity has a name that complies with section 15; and

- (d) all of the officers of the entity are qualified to be officers of a charitable entity under section 16.
- (2) The trustees of a trust must be treated as complying with subsection (1)(a) if,—
- (a) in accordance with a ruling made under Part 5A of the Tax Administration Act 1994,—
- (i) an amount of income derived by the trustees in trust is treated as having been derived by the trustees in trust for charitable purposes for the purposes of section CW 41 of the Income Tax Act 2007; or
- (ii) income is treated as having been derived directly or indirectly from a business carried on by, or for, or for the benefit of, the trustees in trust for charitable purposes for the purposes of section CW 42 of the Income Tax Act 2007; or
- (b) the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955.
- (3) A society or an institution must be treated as complying with subsection (1)(b) if, in accordance with a ruling made under Part 5A of the Tax Administration Act 1994, that society or institution is treated as being a society or institution that is established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual for the purposes of section CW 41 or CW 42 of the Income Tax Act 2007.
- (4) Subsections (2) and (3) cease to apply in relation to an entity if—
- (a) the period for which the ruling applies has expired; or
- (b) the ruling has ceased to apply because of section 91G of the Tax Administration Act 1994; or
- (c) the ruling has otherwise ceased to apply to the entity.
- (5) Despite subsections (1) to (3), an entity does not qualify for registration as a charitable entity if—
- (a) the entity is a designated terrorist entity as defined in section 4(1) of the Terrorism Suppression Act 2002; or
- (b) the entity has been convicted of any offence under sections 6A to 13F of the Terrorism Suppression Act 2002.

Section 13(2)(a)(i): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 13(2)(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 13(3): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 13(5)(a): amended, on 20 November 2007, by section 46(2)(a) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13(5)(a): amended, on 20 November 2007, by section 46(2)(b) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

Section 13(5)(b): amended, on 5 October 2021, by section 57 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 13(5)(b): amended, on 20 November 2007, by section 46(3) of the Terrorism Suppression Amendment Act 2007 (2007 No 102).

#### **14 Board may act on basis of reasonable assumptions in relation to charitable trusts**

- (1) A trust is not prevented from being of a kind referred to in section 13(1)(a) merely because the trustees of the trust have not yet derived an amount of income in trust for charitable purposes if, in the opinion of the Board,—
  - (a) an amount of income will be derived by the trustees in trust for charitable purposes; and
  - (b) it is fit and proper to register the trustees of the trust as a charitable entity.
- (2) For the purposes of subsection (1), the Board may act on the basis of any assumptions concerning the future derivation of income for charitable purposes that, in the opinion of the Board, are reasonable in the circumstances of the case.

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#### **Example**

A charitable trust has recently been created.

The trustees of that trust have not yet derived an amount of income in trust for charitable purposes. However, the Board is of the opinion, having regard to reasonable assumptions, that the trustees will derive an amount of income in trust for charitable purposes. The Board is also of the opinion that it is fit and proper to register the trustees. Accordingly, the Board is satisfied that the trust is of a kind referred to in section 13(1)(a).

The trust has a name that complies with section 15 and the trustees of the charitable trust are qualified to be officers of a charitable entity.

The trustees of the trust qualify for registration as a charitable entity.

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Section 14 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 14(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 14(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 14 example: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### **15 Name of entity**

The name of an entity complies with this section if—

- (a) the entity is incorporated under that name under the Incorporated Societies Act 1908; or

- (b) the entity is incorporated under that name under the Charitable Trusts Act 1957; or
- (c) the entity is incorporated under that name under the Companies Act 1993; or
- (d) the entity is established, or constituted, by an Act under that name; or
- (e) in any other case, in the opinion of the Board, the name is not—
  - (i) offensive; or
  - (ii) liable to mislead the public.

Section 15(e): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **16 Qualifications of officers of charitable entities**

- (1) A person who is not disqualified by this section 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:
  - (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):
    - (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:
  - (e) an individual who, or a body corporate that, is disqualified from being an officer of a charitable entity under section 31(4):
  - (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:
  - (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:
  - (h) 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.



- (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 (g) in relation to an officer of that entity.
- (5) If the Board waives the application of a disqualifying factor set out in subsection (2)(a) to (g), 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.
- (6) The waiver may be granted on any terms or conditions that the Board thinks fit.
- (7) The Board may vary a waiver in the same way as a waiver may be granted under this section.
- (8) The Board may revoke a waiver granted under this section.
- (9) If the Board decides to exercise a power under subsection (4), (7), or (8), it must direct the chief executive to give the entity written notice of the decision.

Section 16(2)(c): replaced, on 14 February 2017, by section 4 of the Charities Amendment Act 2017 (2017 No 1).

Section 16(2)(d): substituted, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 16(2)(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 16(4): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(5): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(6): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(7): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(8): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(9): inserted, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### *Applications for registration*

#### **17 Application for registration**

- (1) An application for registration of an entity as a charitable entity must be sent or delivered to the chief executive and must—
  - (a) be in the form prescribed by the chief executive; and
  - (b) be accompanied by a document in the form prescribed by the chief executive, signed by, or on behalf of, every person who is an officer of the entity, that contains a certification that the person is not disqualified

from being an officer of a charitable entity in relation to the entity under section 16; and

- (c) be accompanied by a copy of the rules of the entity; and
  - (d) be accompanied by the fee prescribed by regulations for the application (if any); and
  - (e) contain, or be accompanied by, any other information or documentation prescribed by the chief executive.
- (2) If a request for a waiver under section 16 has been made in relation to an officer of an entity, the document referred to in subsection (1)(b) is not required to contain a certification referred to in that paragraph in relation to that officer.

Section 17(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 17(1)(a): replaced, on 25 February 2012, by section 6(1) of the Charities Amendment Act 2012 (2012 No 4).

Section 17(1)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 17(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 17(1)(b): amended, on 25 February 2012, by section 6(2) of the Charities Amendment Act 2012 (2012 No 4).

Section 17(1)(d): amended, on 25 February 2012, by section 6(3) of the Charities Amendment Act 2012 (2012 No 4).

Section 17(1)(e): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 17(1)(e): amended, on 25 February 2012, by section 6(4) of the Charities Amendment Act 2012 (2012 No 4).

## **18 Chief executive to consider application**

- (1) The chief executive must, as soon as practicable after receiving a properly completed application for registration of an entity as a charitable entity, consider whether the entity qualifies for registration as a charitable entity.
- (2) In considering the application, the chief executive may request that the applicant supply further information or documentation within 20 working days after the date of the request.
- (3) In considering an application, the chief executive must—
  - (a) have regard to—
    - (i) the activities of the entity at the time at which the application was made; and
    - (ii) the proposed activities of the entity; and
    - (iii) any other information that it considers is relevant; and
  - (b) observe the rules of natural justice; and
  - (c) give the applicant—

- (i) notice of any matter that might result in its application being declined; and
  - (ii) 20 working days after the date of that notice to make submissions to the chief executive on the matter.
- (3A) An application is to be treated as withdrawn if an applicant fails to adequately respond to a request under subsection (2) or to make submissions to the chief executive on a matter in a notice given under subsection (3)(c) within—
  - (a) 20 working days after the date of the request or notice; or
  - (b) a longer period that the chief executive allows at the request of the applicant.
- (4) Despite subsection (1), the chief executive is not required to consider an application that has been made in breach of section 31(4).

Section 18 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 18(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 18(2): amended, on 14 February 2017, by section 5(1) of the Charities Amendment Act 2017 (2017 No 1).

Section 18(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 18(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 18(3)(c)(ii): amended, on 14 February 2017, by section 5(2) of the Charities Amendment Act 2017 (2017 No 1).

Section 18(3)(c)(ii): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 18(3A): inserted, on 14 February 2017, by section 5(3) of the Charities Amendment Act 2017 (2017 No 1).

Section 18(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **19 Board to decide application for registration**

- (1) After considering an application, the chief executive must recommend to the Board that it either grant or decline the application.
- (2) If the Board is satisfied that the entity qualifies for registration as a charitable entity, the Board must grant the application and direct the chief executive to—
  - (a) register the entity as a charitable entity; and
  - (b) allocate a registration number to the entity; and
  - (c) notify the entity of its registration and of its registration number.
- (3) The Board is not required to follow a formal process when it acts under subsection (2).
- (4) If, after considering an application, the Board is not satisfied that an entity is qualified to be registered as a charitable entity, the Board must give the chief

executive the reasons for its decision and direct the chief executive to notify the entity of the Board's decision and the reasons for it.

- (5) Before acting under subsection (4) in any case, the Board must be satisfied that the chief executive has complied with section 18(3) in that case.

Section 19: replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **20 Board may backdate registration of entity as charitable entity**

- (1) The Board may, if it thinks fit, direct the chief executive to register a notice in the register of charitable entities that specifies that an entity must be treated as having become registered as a charitable entity at a time (the **effective registration time**) that is before the time at which the entity actually became registered as a charitable entity.

- (2) However, the effective registration time must not,—

(a) in the case of a trust, society, or an institution referred to in section 73(1) of the Estate and Gift Duties Act 1968 created or established by a gift after the commencement of this section, be earlier than the time that the gift was made; and

(b) in any other case, be earlier than the time that the chief executive received a properly completed application for registration of the entity as a charitable entity.

- (3) Before the Board exercises its powers under subsection (1), the Board must be satisfied that the entity was qualified for registration as a charitable entity at all times during the period between the effective registration time and the time at which the entity actually became registered as a charitable entity.

- (4) If the Board exercises its powers under subsection (1) in relation to an entity, the entity must be treated as having become registered as a charitable entity at the effective registration time for the purposes of this Act, the Income Tax Act 2007, and the Estate and Gift Duties Act 1968.

Section 20 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 20(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 20(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 20(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 20(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 20(4): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

*Register of charitable entities established*

**21 Register of charitable entities**

- (1) A register called the register of charitable entities is established.
- (2) The register may be—
  - (a) an electronic register; or
  - (b) kept in any other manner that the chief executive thinks fit.
- (3) The register must be operated at all times unless—
  - (a) the chief executive suspends the operation of the register, in whole or in part, in accordance with subsection (4); or
  - (b) otherwise provided in regulations.
- (4) The chief executive may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the chief executive considers that it is not practical to provide access to the register.

Section 21(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 21(3)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 21(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**22 Purpose of register**

The purpose of the register is—

- (a) to enable a member of the public to—
  - (i) determine whether an entity is registered as a charitable entity under this Act; and
  - (ii) obtain information concerning the nature, activities, and purposes of charitable entities; and
  - (iii) know how to contact a charitable entity; and
- (b) to assist any person—
  - (i) in the exercise of the person's powers under this Act or any other enactment; or
  - (ii) in the performance of the person's functions under this Act or any other enactment.

**23 Chief executive is registrar of register**

- (1) The chief executive holds the office of registrar of the register.
- (2) The chief executive must ensure that the register is compiled and maintained.

Section 23 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 23(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 23(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **24 Contents of register**

- (1) The register must contain the following information and documents for each charitable entity:
  - (a) the name of the entity; and
  - (b) the address for service of the entity; and
  - (c) the registration number of the entity; and
  - (d) the names of the officers of the entity and of all persons who have been officers of the entity since the entity was first registered as a charitable entity; and
  - (e) a copy of the rules of the entity; and
  - (f) the application for registration of the entity as a charitable entity (including all required accompanying information and documents); and
  - (g) each annual return sent or delivered to the chief executive by the entity; and
  - (h) each notice of change sent or delivered under section 40; and
  - (i) the terms and conditions of any exemption granted under section 43 that is in force in relation to the entity.
- (2) The register must contain any other information or documents prescribed by regulations.
- (3) This section is subject to section 25.

Section 24(1)(g): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 24(2): amended, on 25 February 2012, by section 7 of the Charities Amendment Act 2012 (2012 No 4).

## **25 Chief executive may allow information and documents to be omitted or removed from register and may restrict public access to information and documents**

- (1) The chief executive may remove or omit from the register any information or documents that relate to a charitable entity if—
  - (a) the charitable entity is removed from the register; or
  - (b) the chief executive considers, in the public interest, that the information or documents should not form part of the register.

- (2) The chief executive may, on a request from an entity or on its own motion, prevent or restrict public access to any information or documents that relate to the entity if the chief executive considers, in the public interest, that public access to that information or those documents should be prevented or restricted.
- (3) For the purposes of subsection (2), the chief executive may prevent or restrict access subject to any terms and conditions that it thinks fit.
- (4) This section does not limit the Official Information Act 1982.

Section 25 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 25(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 25(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 25(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 25(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **26 Amendments to register**

The chief executive may, at any time, make any amendments to the register that are necessary—

- (a) to reflect any changes in the information that relates to a charitable entity; or
- (b) to correct a mistake caused by any error or omission on the part of the chief executive; or
- (c) for the purposes of section 25; or
- (d) to comply with any order made under section 60 or section 61.

Section 26: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 26(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### *Searches of register*

## **27 Search of register**

- (1) A person may search the register in accordance with this Act or regulations.
- (2) The register may be searched only by reference to the following criteria:
  - (a) the name of the charitable entity;
  - (b) the registration number of the charitable entity;
  - (c) the name of an officer of the charitable entity;
  - (d) any other criteria prescribed by regulations.

Section 27(2)(d): amended, on 25 February 2012, by section 8 of the Charities Amendment Act 2012 (2012 No 4).

## 28 Search purposes

A search of the register may be carried out only by the following persons for the following purposes:

- (a) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual;
- (b) a person for the purpose of determining whether an entity is registered as a charitable entity under this Act;
- (c) a person for the purpose of obtaining information concerning the nature, activities, and purposes of a charitable entity;
- (d) a person for the purpose of knowing how to contact a charitable entity;
- (e) a person for the purpose of assisting the person in the exercise of the person's powers under this Act or any other enactment;
- (f) a person for the purpose of assisting the person in the performance of the person's functions under this Act or any other enactment.

## 29 When search constitutes interference with privacy of individual

A search of the register for personal information that has not been carried out in accordance with sections 27 and 28 constitutes an action that is an interference with the privacy of an individual under section 69 of the Privacy Act 2020.

Section 29: amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### *Supply of register information and documents*

## 30 Chief executive may supply register information or documents for purposes of Inland Revenue Acts

- (1) The chief executive may supply any register information or documents to a person for the purpose of assisting the person in the exercise of the person's powers under any of the Inland Revenue Acts or in the performance of the person's functions under any of the Inland Revenue Acts if, in the opinion of the chief executive, it is in all the circumstances appropriate to do so.
- (2) For the purposes of this section, **register information or documents** means—
  - (a) information or documents that are contained in the register;
  - (b) information or documents that would have been contained in the register but for the exercise of a power under section 25 to omit or remove that information or those documents from the register.

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### **Example**

A society has become registered as a charitable entity.

Members of the public donate money to the society and claim rebates of income tax in respect of those gifts under subpart LD of the Income Tax Act 2007.



In order to determine whether a rebate can properly be claimed, the Inland Revenue Department needs to consider whether the society is of a kind referred to in subpart LD of the Income Tax Act 2007. The information contained in the application for registration of the society as a charitable entity could assist in this process.

The chief executive may supply a copy of the application for registration of the society as a charitable entity to the Inland Revenue Department.

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Section 30 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 30(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 30 example: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 30 example: amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

### *Deregistration of charitable entities*

#### **31 Deregistration of charitable entity from register**

- (1) An entity is deregistered as a charitable entity if it is removed from the register.
- (2) An entity is removed from the register if the Board directs that a notice be registered in the register that—
  - (a) states that the entity is removed from the register; and
  - (b) states the date on which the removal is effective.
- (3) The entity ceases to be a charitable entity on the date referred to in subsection (2)(b).
- (4) The Board may, if it has removed an entity from the register, make either or both of the following orders:
  - (a) 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:
  - (b) an order disqualifying an officer of the entity from being an officer of a charitable entity for a specified period that does not exceed 5 years.

Section 31(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 31(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### **32 Grounds for removal from register**

- (1) The Board may direct that an entity be removed from the register if—
  - (a) the entity is not, or is no longer, qualified for registration as a charitable entity; or
  - (b) there has been a significant or persistent failure by the entity to meet its obligations under this Act or any other enactment; or

- (c) there has been a significant or persistent failure by any 1 or more of the officers of the entity to meet their obligations under this Act; or
  - (d) there has been a significant or persistent failure by any 1 or more collectors who act on behalf of the entity to meet their obligations under this Act; or
  - (e) the entity has engaged in serious wrongdoing or any person has engaged in serious wrongdoing in connection with the entity; or
  - (f) the entity has sent or delivered to the chief executive a request to be removed from the register.
- (2) For the purposes of subsection (1)(a), the trustees of a trust must be treated as being no longer qualified for registration as a charitable entity if, as a result of a change to the rules or purposes of the entity, the trust is no longer of a kind in relation to which an amount of income can be derived by the trustees in trust for charitable purposes.
- (3) Subsection (2) does not limit the circumstances in which an entity may be considered to be no longer qualified for registration as a charitable entity.

Section 32(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 32(1)(f): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **33 Notice of intention to remove from register**

- (1) The chief executive must, before an entity is removed from the register under section 32(1)(a) to (e), give notice of the matters set out in subsection (2) to the entity.
- (2) That notice must specify—
- (a) the name of the entity; and
  - (b) the registration number of the entity; and
  - (c) the provision of this Act under which, and the grounds on which, it is intended to remove the entity from the register; and
  - (d) the date by which an objection to the removal from the register must be received by the chief executive, which must be not less than 20 working days after the date of the notice.

Section 33(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 33(2)(d): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **34 Objection to removal from register**

The entity and any officer of the entity may send or deliver to the chief executive an objection to the entity's removal from the register on either or both of the following grounds:

- (a) that the grounds on which it is intended to remove the entity from the register have not been satisfied;
- (b) that, for any other reason, it would not be in the public interest to remove the entity from the register.

Section 34: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **35 Duties of Board and chief executive if objection received**

- (1) If an objection to the removal of an entity from the register under section 34 is received by the chief executive on or before the date referred to in section 33(2)(d), the Board must not proceed with the removal unless the Board is satisfied that it is in the public interest to proceed with the removal from the register and that—
  - (a) 1 or more of the grounds of removal from the register have been satisfied; or
  - (b) the objection has been withdrawn; or
  - (c) any facts on which the objection is based are not, or are no longer, correct; or
  - (d) the objection is frivolous or vexatious.
- (2) If an objection to the removal of an entity from the register under section 34 is received by the chief executive on or before the date referred to in section 33(2)(d) and the Board decides to proceed with the removal of the entity from the register,—
  - (a) the chief executive must give to the charitable entity notice of—
    - (i) the Board’s decision to proceed with the removal of the entity from the register; and
    - (ii) the reasons for the Board’s decision; and
    - (iii) the entity’s right to appeal against the decision under section 59; and
  - (b) the chief executive must not proceed to remove the entity from the register earlier than 20 working days after the date on which the notice referred to in paragraph (a) is given to the charitable entity.

Section 35 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 35(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 35(2): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **36 Board to observe rules of natural justice**

- (1) In considering whether to remove an entity from the register and whether to make an order under section 31(4), the Board must—

- (a) observe the rules of natural justice; and
  - (b) give the entity a reasonable opportunity to make submissions to the Board on the matter.
- (2) In considering whether to disqualify a person from being an officer of a charitable entity under section 31(4), the Board must—
- (a) observe the rules of natural justice; and
  - (b) give the person a reasonable opportunity to make submissions to the Board on the matter.

Section 36 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 36(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 36(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 36(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 36(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## Subpart 2—Duties, inquiries, appeals, and other miscellaneous matters relating to charitable entities

### *Holding out offences*

#### **37 No holding out unless registered under this Act**

- (1) A person must not—
- (a) use a style or title including the words “registered charitable entity”; or
  - (b) state or imply, or permit a statement or implication, that—
    - (i) the person is registered as a charitable entity under this Act; or
    - (ii) an entity that the person acts on behalf of is registered as a charitable entity under this Act.
- (2) Subsection (1) does not apply to—
- (a) a charitable entity; or
  - (b) a person who acts on behalf of a charitable entity.
- (3) A person must not state or imply, or permit a statement or implication, that the person acts on behalf of a charitable entity if the person does not act on behalf of that charitable entity.

#### **38 Offence to contravene section 37**

- (1) Every person who acts in contravention of section 37(1) or section 37(3) commits an offence and is liable on conviction to a fine not exceeding \$30,000.

- (2) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against subsection (1) ends on the date that is 2 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Section 38(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 38(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Duty of telephone and Internet collectors*

#### **39 Duty of telephone and Internet collectors to disclose registration number on request**

If a collector who acts on behalf of a charitable entity is requesting funds, canvassing for subscriptions, selling raffle or lottery tickets, or appealing for donations, by means of the telephone or the Internet, the collector must disclose the registration number of the entity if requested to do so by a member of the public.

### *Duty to notify changes*

#### **40 Duty to notify changes to chief executive**

- (1) Every charitable entity must ensure that it sends or delivers to the chief executive notice of any of the following changes:
- (a) a change to the name of the charitable entity;
  - (b) a change to the address for service of the charitable entity;
  - (c) a change in the officers of the charitable entity, whether as the result of an officer ceasing to hold office or the appointment of a new officer, or both;
  - (ca) a change that disqualifies an officer of the charitable entity from being an officer of the entity;
  - (d) a change in the balance date of the charitable entity;
  - (e) a change to the rules of the charitable entity;
  - (f) a change to the purposes of the charitable entity.
- (2) A notice under subsection (1) must—
- (a) be in the form prescribed by the chief executive (if any); and
  - (b) contain, or be accompanied by, any other information or documentation prescribed by the chief executive; and
  - (c) specify the effective date of the change; and
  - (d) be sent or delivered to the chief executive within 3 months of the later of—

- (i) the effective date of the change; or
  - (ii) the charitable entity first becoming aware of the change.
- (3) This section does not apply if the change has been notified in an annual return sent or delivered under section 41 before the change is required to be notified under subsection (2)(d).

Section 40 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 40(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 40(1)(ca): inserted, on 25 February 2012, by section 9(1) of the Charities Amendment Act 2012 (2012 No 4).

Section 40(2)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 40(2)(a): amended, on 25 February 2012, by section 9(2) of the Charities Amendment Act 2012 (2012 No 4).

Section 40(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 40(2)(b): amended, on 25 February 2012, by section 9(3) of the Charities Amendment Act 2012 (2012 No 4).

Section 40(2)(d): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### *Duty to prepare annual returns*

#### **41 Duty to prepare annual return**

- (1) Every charitable entity must ensure that, within 6 months after each balance date of the entity, an annual return that complies with subsection (2) is—
- (a) completed in relation to the entity and that balance date; and
  - (b) dated and signed on behalf of the entity; and
  - (c) sent or delivered to the chief executive.
- (2) The annual return of a charitable entity must—
- (a) be in the form, contain the particulars, and comply with the directions as to the preparation of those returns that are prescribed by the chief executive under section 42; and
  - (b) be accompanied by 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.
- (3) For the purposes of this Act,—
- (a) an entity may nominate a balance date for the entity—
    - (i) in the application for registration of the entity as a charitable entity; or

- (ii) in the case of a single entity or an entity that forms part of a single entity, in the application for registration of the single entity as a charitable entity; and
  - (b) a charitable entity must be treated as having a balance date of 31 March in each calendar year if a balance date for that charitable entity has not been nominated under paragraph (a).
- (4) Subject to subsections (5) and (6), an entity must have a balance date in each calendar year.
- (5) An entity may change its balance date for the purposes of this Act either—
  - (a) without the approval of the chief executive if—
    - (i) the period between any 2 balance dates does not exceed 15 months; and
    - (ii) the entity continues to have a balance date in each calendar year; or
  - (b) with the approval of the chief executive before the change is made.
- (6) The chief executive may approve a change of balance date with or without conditions.
- (7) Subsection (3)(b) is subject to subsections (5) and (6).

Section 41(1)(c): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 41(2): replaced, on 1 April 2015, by section 19 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 41(5)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 41(5)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 41(6): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **42 Chief executive must prescribe content of annual returns**

- (1) The chief executive must prescribe the following matters in relation to the annual returns of charitable entities:
  - (a) the form of the returns:
  - (b) the particulars to be contained in the returns:
  - (c) directions to be complied with in the preparation of the returns.
- (2) The chief executive may prescribe different requirements for different types or classes of entities.
- (3) Section 72A(2) and (5) to (7) apply to a form or requirement to be prescribed under this section.

Section 42 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 42 heading: amended, on 25 February 2012, by section 11(1) of the Charities Amendment Act 2012 (2012 No 4).

Section 42(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 42(1): amended, on 25 February 2012, by section 11(2) of the Charities Amendment Act 2012 (2012 No 4).

Section 42(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 42(2): amended, on 25 February 2012, by section 11(3) of the Charities Amendment Act 2012 (2012 No 4).

Section 42(3): inserted, on 25 February 2012, by section 11(4) of the Charities Amendment Act 2012 (2012 No 4).

#### **42A Content of financial statements**

- (1) The financial statements referred to in section 41(2)(b) must be prepared in accordance with,—
  - (a) in the case of financial statements of a specified not-for-profit entity, generally accepted accounting practice; or
  - (b) in any other case, either generally accepted accounting practice or a non-GAAP standard that applies for the purposes of this section.
- (2) In this section and sections 41 and 42B,—
  - (a) **specified not-for-profit entity** has the meaning set out in section 46 of the Financial Reporting Act 2013:
  - (b) **accounting period, applicable financial reporting standard, financial statements, generally accepted accounting practice, and non-GAAP standard** have the same meanings as in section 5 of the Financial Reporting Act 2013.
- (3) If a charitable entity is subject to another Act that imposes duties relating to the preparation, audit, registration, or lodgement of financial statements, the entity must, in addition to complying with this Act, comply with the requirements of that other Act.

Section 42A: inserted, on 1 April 2015, by section 20 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

#### **42B Offence to knowingly fail to comply with standards**

- (1) A charitable entity and every officer of the charitable entity commit an offence and are liable on conviction to a fine not exceeding \$50,000 if—
  - (a) the financial statements of the charitable entity referred to in section 41(2)(b) fail to comply with an applicable financial reporting standard or a non-GAAP standard (as the case may be); and
  - (b) the charitable entity or officer (as the case may be) knows, at the time that the financial statements accompany the annual return when it is sent



or delivered under section 41, that the financial statements fail to so comply.

- (2) If financial statements are prepared on a consolidated basis in respect of a single entity under section 46(1A)(a), subsection (1) applies as if the reference to financial statements were a reference to the financial statements for the single entity and the other references to a charitable entity were references to the parent entity.

Section 42B: inserted, on 1 April 2015, by section 20 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

#### **42C When financial statements must be audited or reviewed**

- (1) This section applies to—
- (a) every charitable entity that is large; and
  - (b) every charitable entity that is of medium size.
- (2) Every charitable entity to which this section applies (A) must ensure that the financial statements of A that accompany an annual return under section 41 are—
- (a) audited by a qualified auditor if A is large in respect of the accounting period to which the financial statements relate;
  - (b) audited or reviewed by a qualified auditor if A is of medium size in respect of the accounting period to which the financial statements relate.
- (3) If financial statements are prepared on a consolidated basis in respect of a single entity under section 46(1A)(a),—
- (a) the parent entity must ensure that the financial statements of the single entity that accompany an annual return under section 41 are—
    - (i) audited by a qualified auditor if the single entity is large in respect of the accounting period to which the financial statements relate;
    - (ii) audited or reviewed by a qualified auditor if the single entity is of medium size in respect of the accounting period to which the financial statements relate; and
  - (b) for the purposes of paragraph (a), the references to a charitable entity in subsection (1) and in sections 42D(1) and 42F must be treated as references to the single entity.

Section 42C: inserted, on 1 April 2015, by section 5 of the Charities Amendment Act 2014 (2014 No 63).

#### **42D Meaning of large and medium size**

- (1) In section 42C,—
- (a) a charitable entity is **large** in respect of an accounting period if, in each of the 2 preceding accounting periods of the entity, the total operating

expenditure of the entity and all entities it controls (if any) is \$1 million or more:

- (b) a charitable entity is of **medium size** in respect of an accounting period if—
    - (i) it is not large under paragraph (a); and
    - (ii) in each of the 2 preceding accounting periods of the entity, the total operating expenditure of the entity and all entities it controls (if any) is \$500,000 or more:
  - (c) **qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013.
- (2) A financial reporting standard (within the meaning of the Financial Reporting Act 2013), or a part of such a standard, that is expressed as applying for the purposes of subsection (1)(a) or (b) must be applied in determining whether that provision applies (for example, the standard may define operating expenditure or control).

Section 42D: inserted, on 1 April 2015, by section 5 of the Charities Amendment Act 2014 (2014 No 63).

#### **42E Offence relating to audit or review**

If a charitable entity fails to comply with section 42C, the charitable entity commits an offence and is liable on conviction to a fine not exceeding \$50,000.

Section 42E: inserted, on 1 April 2015, by section 5 of the Charities Amendment Act 2014 (2014 No 63).

#### **42F Audit or review must be carried out in accordance with auditing and assurance standards**

- (1) An auditor must, in carrying out an audit or a review of the financial statements of a charitable entity, comply with all applicable auditing and assurance standards.
- (2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards.
- (3) This section does not apply in respect of a charitable entity that is a public entity (within the meaning of the Public Audit Act 2001).
- (4) In this section, **applicable auditing and assurance standards** has the same meaning as in section 5 of the Financial Reporting Act 2013.

Section 42F: inserted, on 1 April 2015, by section 5 of the Charities Amendment Act 2014 (2014 No 63).

### *Exemptions*

#### **43 Chief executive may grant exemptions**

- (1) The chief executive may, by written notice to an entity, exempt the entity from compliance with any provision or provisions of—

- (a) section 17; or
  - (b) this subpart; or
  - (c) any regulations made under this Act.
- (2) The exemption may be granted on any terms and conditions that the chief executive thinks fit.
- (3) The chief executive may vary an exemption in the same way as an exemption may be granted under this section.
- (4) The chief executive may, by written notice to an entity, revoke an exemption granted under this section.
- (5) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Section 43 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 43(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 43(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 43(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 43(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 43(5): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Board or chief executive may treat entity and affiliated or closely related entities as single entity*

Heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**44 Board or chief executive may treat entity and affiliated or closely related entities as single entity**

- (1) The Board or the chief executive may, on the request of an entity, treat the entity (the **parent entity**) and 1 or more other entities as forming part of a single entity (the **single entity**) for the purposes of any or all of the provisions of this Act if the Board or the chief executive is satisfied that—
- (a) the other entity, or those other entities, are affiliated or closely related to the parent entity; and
  - (b) each of the entities qualifies for registration as a charitable entity; and
  - (c) it is fit and proper to treat the entities as forming part of a single entity.

- (2) In considering whether to act under subsection (1), the Board or the chief executive must have regard to the extent to which the entities have similar charitable purposes.
- (3) A request made under this section must be in the form prescribed by the chief executive (if any).

Section 44 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 44(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 44(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 44(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 44(3): amended, on 25 February 2012, by section 12 of the Charities Amendment Act 2012 (2012 No 4).

#### **45 Parent entity may request means of compliance with duties**

- (1) A parent entity, on behalf of a single entity, may request,—
  - (a) in relation to section 40, that the duty under that section be either—
    - (i) separately complied with by each entity that forms part of the single entity; or
    - (ii) complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity:
  - (b) in relation to section 41, that the duty under that section be either—
    - (i) separately complied with by each entity that forms part of the single entity; or
    - (ii) complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity.
- (2) A request made under this section must be in the form prescribed by the chief executive (if any).
- (3) The Board or the chief executive must have regard to a request made under this section when it is setting terms and conditions under section 46.

Section 45(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 45(2): amended, on 25 February 2012, by section 13 of the Charities Amendment Act 2012 (2012 No 4).

Section 45(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**46 Board or chief executive may treat parent entity and 1 or more other entities as forming part of single entity on certain terms and conditions**

- (1) The Board or the chief executive may treat the parent entity and 1 or more other entities as forming part of the single entity on any terms and conditions that the Board or the chief executive thinks fit, including terms and conditions relating to—
- (a) the manner in which the single entity may apply for registration as a charitable entity; and
  - (b) the name that must be treated as being the name of the single entity for the purposes of this Act; and
  - (c) who must be treated as being the officers of the single entity for the purposes of this Act; and
  - (d) the rules that must be treated as being the rules of the single entity for the purposes of this Act; and
  - (e) the manner in which the duties or obligations imposed under this Act on charitable entities are to be complied with on behalf of the single entity and the entities that form part of that single entity; and
  - (f) the information and documents that must be included in the register in relation to the single entity and the entities that form part of that single entity; and
  - (g) the manner in which rights or powers conferred under this Act on a charitable entity may be exercised by the single entity.
- (1A) If the duty under section 41 (duty to prepare annual return) is to be complied with by the parent entity in relation to the single entity, the terms and conditions under subsection (1) may provide that the financial statements that must accompany an annual return that is sent or delivered by the parent entity are prepared—
- (a) on a consolidated basis in respect of the single entity; or
  - (b) separately in respect of each entity that forms part of the single entity.
- (1B) The Board or the chief executive must, in deciding whether subsection (1A)(a) or (b) applies, take into account—
- (a) the needs of users of the financial statements; and
  - (b) the purpose of this Act set out in section 3.
- (1C) If terms and conditions referred to in subsection (1A) relate to the financial statements of an entity, those terms and conditions must be treated as including a requirement for the financial statements to disclose, in the statement of accounting policies section, a brief description of the terms and conditions that apply under subsection (1A).
- (2) The Board or the chief executive must give written notice of those terms and conditions to the parent entity.

- (3) The Board or the chief executive may vary those terms and conditions by written notice to the parent entity.
- (4) If those terms and conditions provide that the duty under—
- (a) section 40 must be complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity, the entities that form part of the single entity are not required to separately comply with that section:
  - (b) section 41 must be complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity, the entities that form part of the single entity are not required to separately comply with that section (but *see* subsection (1A)).
- (5) For the purposes of this Act, the single entity must be treated as—
- (a) having the name, officers, and rules referred to in subsection (1)(b) to (d); and
  - (b) being qualified for registration as a charitable entity if all of the entities that form part of the single entity are qualified for registration as charitable entities.
- (6) This section is subject to section 45.

Section 46 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 46(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 46(1A): inserted, on 1 April 2015, by section 21(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 46(1B): inserted, on 1 April 2015, by section 21(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 46(1C): inserted, on 1 April 2015, by section 6 of the Charities Amendment Act 2014 (2014 No 63).

Section 46(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 46(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 46(4)(b): amended, on 1 April 2015, by section 21(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

#### 47 Effect of registration of single entity as charitable entity

If a single entity is registered as a charitable entity, then, unless the terms and conditions referred to in section 46 otherwise provide,—

- (a) each entity that forms part of the single entity under section 44(1) must be treated as being registered under this Act as a charitable entity for the purposes of—
  - (i) the provisions of this Act (including section 37); and

- (ii) the provisions of the Income Tax Act 2007; and
- (iii) the provisions of the Estate and Gift Duties Act 1968; and
- (b) the register—
  - (i) must contain the information and documents referred to in section 24 in relation to the single entity; and
  - (ii) is not required to separately contain the information and documents referred to in that section in relation to the entities that form part of the single entity.

Section 47(a)(ii): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

#### **48 Board may revoke entity's status as forming part of single entity**

- (1) The Board may revoke an entity's status as forming part of a single entity if—
  - (a) the Board is no longer satisfied that—
    - (i) the entity is affiliated or closely related to the parent entity; or
    - (ii) the entity qualifies for registration as a charitable entity; or
    - (iii) it is fit and proper to treat the entity as forming part of the single entity; or
  - (b) the Board is satisfied that the entity has failed to comply with a term or condition referred to in section 46; or
  - (c) the parent entity has sent or delivered to the Board a request for the Board to revoke the entity's status as forming part of the single entity.
- (2) An entity's status as forming part of a single entity is revoked if the Board registers a notice in the register that—
  - (a) states that the entity's status as forming part of the single entity is revoked; and
  - (b) states the date on which the revocation is effective.
- (3) On the date referred to in subsection (2)(b), the entity ceases to be—
  - (a) part of the single entity; and
  - (b) treated as a charitable entity under section 47.

Section 48 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 48(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 48(1)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 48(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 48(1)(c): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 48(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### **49 Board to observe rules of natural justice**

In considering whether to revoke an entity's status as forming part of a single entity, the Board must—

- (a) observe the rules of natural justice; and
- (b) give the entity whose status is proposed to be revoked and the parent entity a reasonable opportunity to make submissions to the Board on the matter.

Section 49 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 49: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 49(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### *Inquiries into charitable entities and other persons*

#### **50 Inquiries into charitable entities and other persons**

- (1) The chief executive may, if it considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under this Act, examine and inquire into—
  - (a) any charitable entity;
  - (b) any person who has engaged in, or is engaging in, conduct that constitutes or may constitute—
    - (i) a breach of this Act; or
    - (ii) serious wrongdoing in connection with a charitable entity.
- (2) The power to examine and inquire into any charitable entity or person under subsection (1) includes the power to examine and inquire into the following matters in connection with the charitable entity or person:
  - (a) the activities and proposed activities of the charitable entity or person;
  - (b) the nature, objects, and purposes of the charitable entity;
  - (c) the management and administration of the charitable entity;
  - (d) the results and outcomes achieved by the charitable entity or person;
  - (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person.

Section 50(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 50(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).



## **51 Duty to assist**

- (1) If the chief executive considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under this Act, the chief executive may, by notice in writing served on any person, require that person—
  - (a) to supply to the chief executive, in writing signed by that person or, in the case of an entity, by an officer or competent employee or agent of the entity, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
  - (b) to supply to the chief executive, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.
- (2) The person has the same privileges in relation to supplying information and documents to the chief executive as witnesses have in proceedings before a court.

Section 51(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 51(1)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 51(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 51(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **52 Offences**

- (1) No person may,—
  - (a) without reasonable excuse, refuse or fail to comply with a notice under section 51; or
  - (b) in purported compliance with a notice under section 51, supply information, or supply a document, knowing it to be false or misleading.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against subsection (2) ends on the date that is 6 months after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Section 52(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 52(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**53 Chief executive may supply inquiry information or documents**

- (1) The chief executive may supply any information or documents that the chief executive obtains under sections 50 to 52 to any person for either or both of the following purposes:
  - (a) assisting the person in the exercise of the person's powers under this Act or in the performance of the person's functions under this Act;
  - (b) detecting and prosecuting offences against any other Act, but, in this case, that information and those documents are not admissible in any criminal proceedings against the person from whom the information or documents were acquired or any person to whom the information or documents relate.
- (2) Any person may use and disclose any information or documents supplied to the person by the chief executive under this section for the purposes referred to in subsection (1).
- (3) This section does not limit sections 27 to 30.

Section 53 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 53(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 53(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

*Warning notices and publication of details of breach, serious wrongdoing, and other matters*

**54 Chief executive may give warning notices**

- (1) This section applies if the chief executive considers that—
  - (a) a charitable entity, or a person in connection with a charitable entity, has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of this Act or serious wrongdoing; or
  - (b) a charitable entity is, or may be, no longer qualified to be registered as a charitable entity; or
  - (c) a person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of section 37.
- (2) The chief executive may give a warning notice to—
  - (a) the charitable entity concerned in the case of subsection (1)(a) or (b); or
  - (b) the person concerned in the case of subsection (1)(c).
- (3) The warning notice must contain information or statements to the following effect:
  - (a) the name of the charitable entity or person:

- (b) a statement of the matters that caused the chief executive to give the notice:
- (c) a statement of the action that the chief executive has taken, or is considering taking, in relation to the matters that caused the chief executive to give the notice:
- (d) a statement of the action that the chief executive considers should be taken to remedy the matters that caused the chief executive to give the notice and the date by which this action must be taken:
- (e) a summary of the grounds for the chief executive's opinion:
- (f) a statement of what might happen if the charitable entity or person does not comply with the warning notice.

Section 54 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(3)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(3)(c): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(3)(d): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 54(3)(e): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **55 Board may publish details of possible breach, possible serious wrongdoing, and other matters**

- (1) This section applies if the Board considers that the entity or person to whom a notice is given under section 54 has failed to remedy, by the date referred to in section 54(3)(d), 1 or more of the matters that caused the chief executive to give the notice under section 54.
- (2) The Board may, in any manner that it thinks fit, publish a notice that contains information or statements to the following effect:
  - (a) the name of the charitable entity or person:
  - (b) a statement to the effect that the Board considers that—
    - (i) the charitable entity, or a person in connection with the charitable entity, has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of this Act or serious wrongdoing; or
    - (ii) the charitable entity is, or may be, no longer qualified to be registered as a charitable entity; or
    - (iii) the person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of section 37:

- (c) a statement of the action that the Board has taken, or is considering taking, in relation to those matters;
  - (d) a summary of the grounds for the Board's opinion.
- (3) However,—
- (a) before the Board exercises its powers under subsection (2), the Board must give to the charitable entity or person notice of—
    - (i) the Board's decision to publish a notice under this section; and
    - (ii) the reasons for the Board's decision; and
    - (iii) the entity's or person's right to appeal the decision under section 59; and
  - (b) the Board must not exercise its powers under subsection (2) earlier than 20 working days after the date on which the notice referred to in paragraph (a) is given to the charitable entity or person.

Section 55 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(1): replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(2)(c): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(2)(d): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(3)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(3)(a)(i): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(3)(a)(ii): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 55(3)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

*Provisions relating to how notices are given and served for purposes of various sections*

**56 Notices**

- (1) Any notice given under this Act by the chief executive is sufficiently given if—
  - (a) it is in writing; and
  - (b) it is signed by the chief executive or a person authorised by him or her for the purpose; and

- (c) it is served or given in accordance with section 57 on or to the person or persons primarily concerned or on or to any person considered by the chief executive or authorised person to represent the person or persons primarily concerned.
- (2) In all courts and in all proceedings under this Act, notices given under this Act that purport to be signed by, or on behalf of, the chief executive must be treated as having been signed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

Section 56: replaced, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **57 Service of notices**

- (1) If this Act authorises the chief executive to serve a notice on, or give a notice to, any person, the notice may be served or given by—
  - (a) delivering it to that person; or
  - (b) leaving it at—
    - (i) the person’s usual or last known place of residence or business; or
    - (ii) the address specified by the person in any notice, application, or other document made, given, or tendered to the chief executive under this Act; or
  - (c) posting it by letter addressed to the person at that place of residence or business or at that address.
- (2) If any notice is sent to any person by registered letter, then,—
  - (a) unless the contrary is proved, the notice must be treated as having been delivered to the person when it would have been delivered in the ordinary course of post; and
  - (b) in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.
- (3) If the notice is required to be served on, or given to, an entity,—
  - (a) the notice may be served on, or given to, an officer or any other person holding a similar position in the entity; and
  - (b) service on the entity must, unless otherwise directed by the chief executive, be treated as service on all persons who are officers of the entity, or who are represented on the entity by those officers.

Section 57(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 57(1)(b)(ii): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 57(3)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

*Administrative penalties***58 Chief executive may require payment of administrative penalty**

- (1) The chief executive may, by written notice to a charitable entity, require the entity to pay to the chief executive an amount prescribed by regulations by way of penalty for—
  - (a) a failure by the charitable entity to send or deliver to the chief executive a notice under section 40 within the time prescribed by that section; or
  - (b) a failure by the charitable entity to send or deliver to the chief executive an annual return under section 41 within the time prescribed by that section.
- (2) The amounts payable under this section—
  - (a) must be paid to the chief executive by the date for payment specified in the notice; and
  - (b) are recoverable by the chief executive in any court of competent jurisdiction as a debt due to the chief executive.

Section 58 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 58(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 58(1)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 58(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 58(2)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 58(2)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

*Appeals against decisions of Board*

Heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**59 Right of appeal**

- (1) A person who is aggrieved by a decision of the Board under this Act may appeal to the High Court.
- (2) An appeal under this section must be made by lodging a notice of appeal with the Registrar of the High Court in Wellington and with the Board within—
  - (a) 20 working days after the date of the decision; or
  - (b) any further time that the High Court may allow on application made before or after the expiration of that period.
- (3) Every notice of appeal must specify—
  - (a) the decision or the part of the decision appealed from; and

- (b) the grounds of appeal in sufficient detail to fully inform the High Court and the Board of the issues in the appeal; and
- (c) the relief sought.

Section 59(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 59(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 59(3)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **60 High Court may make interim order pending determination of appeal**

- (1) At any time before the final determination of an appeal, the High Court 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
  - (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, the High Court may make an interim order preventing or restricting the exercise of a power by the Board under that section.
- (4) An interim order may be subject to any terms or conditions that the High Court thinks fit.
- (5) If the High Court refuses to make an interim order, the person or persons who applied for the order may, within 1 month after the date of the refusal, appeal to the Court of Appeal against the decision.
- (6) If an interim order is made under subsection (1), the chief executive must,—
  - (a) amend the register of charitable entities in accordance with the order as soon as is reasonably practicable after receiving the order; and
  - (b) include a copy of the order in the register of charitable entities, unless the court orders otherwise.
- (7) To enable the chief executive to fulfil the duties imposed by this section, the Registrar of the court in which the interim order is made must send a copy of the order to the chief executive as soon as practicable.

Section 60(3): amended, on 14 February 2017, by section 6 of the Charities Amendment Act 2017 (2017 No 1).

Section 60(6): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 60(7): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

**61 Determination of appeal**

- (1) In determining an appeal, the High Court may—
  - (a) confirm, modify, or reverse the decision of the Board or the chief executive or any part of it;
  - (b) exercise any of the powers that could have been exercised by the Board or the chief executive in relation to the matter to which the appeal relates.
- (2) Without limiting subsection (1), the High Court may make an order requiring an entity—
  - (a) to be registered in the register of charitable entities with effect from a specified date; or
  - (b) to be restored to the register of charitable entities with effect from a specified date; or
  - (c) to be removed from the register of charitable entities with effect from a specified date; or
  - (d) to remain registered in the register of charitable entities.
- (3) The specified date may be a date that is before or after the order is made.
- (4) The High Court may make any other order that it thinks fit.
- (5) An order may be subject to any terms or conditions that the High Court thinks fit.
- (6) Nothing in this section affects the right of any person to apply, in accordance with law, for judicial review.

Section 61(1)(a): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 61(1)(b): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).



### Part 3

#### Miscellaneous matters and amendments to other Acts

##### Subpart 1—Miscellaneous matters relating to Commission

*[Repealed]*

Subpart 1: repealed, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

##### *Reporting obligations*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

##### **62 Reporting obligations in respect of financial year commencing on 1 July 2005**

*[Repealed]*

Section 62: repealed, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

##### *Bank accounts*

*[Repealed]*

Heading: repealed, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

##### **63 Crown Entities Act 2004 provisions concerning bank accounts apply to Commission**

*[Repealed]*

Section 63: repealed, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

##### Subpart 2—Amendments to Income Tax Act 2004

##### **64 Income Tax Act 2004 called principal Act in this subpart**

In this subpart, the Income Tax Act 2004 is called “the principal Act”.

##### **65 Charities: non-business income**

*Amendment(s) incorporated in the Act(s).*

##### **66 Charities: business income**

*Amendment(s) incorporated in the Act(s).*

##### **67 Charitable bequests**

*Amendment(s) incorporated in the Act(s).*

**68 Definitions**

*Amendment(s) incorporated in the Act(s).*

**Subpart 3—Amendments to Tax Administration Act 1994****69 Tax Administration Act 1994 called principal Act in this subpart**

In this subpart, the Tax Administration Act 1994 is called “the principal Act”.

**70 Interpretation**

*Amendment(s) incorporated in the Act(s).*

**71 Officers to maintain secrecy**

*Amendment(s) incorporated in the Act(s).*

**Subpart 4—Amendment to Estate and Gift Duties Act 1968****72 Exemption for gifts to charities and certain bodies**

*Amendment(s) incorporated in the Act(s).*

**Subpart 5—Miscellaneous provisions****72A Forms and requirements prescribed by chief executive**

- (1) The chief executive may do 1 or more of the following things:
  - (a) prescribe forms for the purposes of this Act;
  - (b) prescribe requirements for—
    - (i) specified information or documents to be included in or attached to forms;
    - (ii) forms to be signed by specified persons;
  - (c) prescribe requirements with which documents sent or delivered for registration must comply.
- (2) The chief executive may prescribe a form or requirement only for the purpose of collecting information or documentation required for the chief executive to perform its functions and duties under this Act.
- (3) However, a form prescribed under this section may require information or documents to be included in or attached to the form for the purpose of assisting any person—
  - (a) in the exercise of the person’s powers in connection with subpart LD of the Income Tax Act 2007; or
  - (b) in the performance of the person’s functions in connection with that subpart.
- (4) Subsection (3) applies regardless of whether the information or documentation is collected for the purposes of this Act.

- (5) In order to prescribe a form or requirement, the chief executive—
  - (a) must publish it on its Internet site; and
  - (b) may publish it in any other way.
- (6) In developing a form or requirement to be prescribed, the chief executive must consult persons or organisations that the chief executive considers to be representative of the interests of charitable entities.
- (7) A failure to comply with subsection (6) does not affect the validity of the prescribed form or requirement.

Section 72A: inserted, on 25 February 2012, by section 14 of the Charities Amendment Act 2012 (2012 No 4).

Section 72A heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 72A(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 72A(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 72A(5): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 72A(6): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### 73 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) prescribing fees payable to the Board or the chief executive in respect of any matter under this Act or the manner in which fees may be calculated:
  - (d) prescribing amounts payable to the Board or the chief executive by way of penalty for the purposes of section 58 or the manner in which penalties may be calculated:
  - (e) prescribing procedures, requirements, and other matters for the register of charitable entities, including matters relating to—
    - (i) the operation of that register:
    - (ii) access to that register:
    - (iii) the location of, and hours of access to, that register:
  - (f) declaring any class or classes of persons to be, or not to be, officers for the purposes of this Act:
  - (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

- (2) *[Repealed]*
- (3) The Board or the chief executive may refuse to perform a function or exercise a power until the fee prescribed by regulations is paid.
- (4) Any Order in Council made under subsection (1) may authorise the Board or the chief executive to refund or waive, in whole or in part and on any conditions as may be prescribed by regulations, payment of any fee or amount payable in relation to any person or class of persons.
- (5) Any fee or amount payable to the Board or the chief executive is recoverable by the Board or the chief executive in any court of competent jurisdiction as a debt due to the Board or the chief executive.

Section 73(1)(a): repealed, on 25 February 2012, by section 15(1) of the Charities Amendment Act 2012 (2012 No 4).

Section 73(1)(b): repealed, on 25 February 2012, by section 15(1) of the Charities Amendment Act 2012 (2012 No 4).

Section 73(1)(c): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 73(1)(d): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 73(2): repealed, on 25 February 2012, by section 15(2) of the Charities Amendment Act 2012 (2012 No 4).

Section 73(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 73(3): amended, on 25 February 2012, by section 15(3) of the Charities Amendment Act 2012 (2012 No 4).

Section 73(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 73(4): amended, on 25 February 2012, by section 15(4) of the Charities Amendment Act 2012 (2012 No 4).

Section 73(5): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### **74 Prosecution of offences**

- (1) Proceedings in respect of an offence against this Act must be commenced by the chief executive or a person authorised by the chief executive (the **authorised person**).
- (2) Before a charging document in respect of an offence against this Act is filed against a person, the chief executive or the authorised person must lay the facts of the case, so far as the chief executive or the authorised person is acquainted with them, before a Crown Solicitor.
- (3) The chief executive or the authorised person may file a charging document against a person only if a Crown Solicitor certifies that there are reasonable grounds for a prosecution.
- (4) No action may be taken against the chief executive or the authorised person for malicious prosecution in relation to a prosecution under this Act if a Crown

Solicitor certified that there were reasonable grounds for bringing the prosecution.

Section 74(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 74(1): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 74(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 74(2): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 74(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 74(3): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 74(4): amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **75 No obligation on Board or chief executive or any other person to supervise**

This Act does not impose on the Board or the chief executive or any other person any duty or obligation—

- (a) to supervise the affairs of any person; or
- (b) to apply or operate any system of supervision of any class of person or of charities generally; or
- (c) to exercise any powers conferred by this Act in respect of any particular person.

Section 75 heading: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 75: amended, on 1 July 2012, by section 16(1) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

## **76 Amendments to other Acts**

The enactments in the Schedule are amended in the manner indicated in that schedule.

## Schedule 1AA

### Transitional, savings, and related provisions

s 6A

Schedule 1AA: inserted, on 1 April 2015, by section 7 of the Charities Amendment Act 2014 (2014 No 63).

#### *Provisions relating to Charities Amendment Act 2014*

#### **1 Interpretation**

In clause 2,—

**2014 Amendment Act** means the Charities Amendment Act 2014

**principal Act** means the Charities Act 2005.

#### **2 Provisions relating to audit or review apply to accounting periods that commence on or after commencement**

- (1) The principal Act, as amended by the 2014 Amendment Act, applies to a charitable entity in relation to accounting periods that commence on or after the commencement of this clause.
- (2) The principal Act, as in force before the commencement of this clause, continues to apply to a charitable entity in relation to accounting periods that commenced before the commencement of this clause as if the 2014 Amendment Act had not been enacted.

**Schedule 1**  
**Amendments to other Acts**

s 76

**Crown Entities Act 2004 (2004 No 115)**

*Amendment(s) incorporated in the Act(s).*

**Incorporated Societies Act 1908 (1908 No 212)**

*Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9)**

*Amendment(s) incorporated in the Act(s).*

## Schedule 2

### Provisions relating to Board, chairperson, and members

s 8

Schedule 2: inserted, on 1 July 2012, by section 8 of the Charities Amendment Act (No 2) 2012 (2012 No 43).

#### *Appointments in general*

#### **1 Method of appointment**

- (1) The Minister appoints or reappoints a member of the Board, and a chairperson of the Board, by giving written notice to the member concerned.
- (2) A notice under subclause (1) must—
  - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) in the case of the appointment of a member, state the term of the appointment.

#### **2 Membership of Board and criteria for appointment**

- (1) The Board comprises 3 members (*see* section 8(1)).
- (2) The Minister may only appoint as a member a person who, in the Minister's opinion, has the appropriate knowledge, skills, and experience to assist the Board to perform its functions.

#### **3 Validity of members' acts**

The acts of a person as a member or chairperson of the Board are valid even though—

- (a) a defect existed in the appointment of the person; or
- (b) the occasion for the person's acting, or for his or her appointment, had not arisen or had ended.

#### **4 Validity of appointments**

- (1) The appointment of a person as a member or chairperson of the Board is not invalid only because a defect existed in the appointment of the person.
- (2) This clause does not apply to a defect in the qualifications for appointment of a member.

#### **5 Term of office**

- (1) A member of the Board holds office for 3 years or any shorter period stated in the notice of appointment.
- (2) A member may be reappointed.



- (3) A member continues in office despite the expiry of his or her term of office until—
- (a) the member is reappointed; or
  - (b) the member's successor is appointed; or
  - (c) the Minister informs the member by written notice (with a copy to the Board) that the member is not to be reappointed and no successor is to be appointed at that time.
- (4) This clause is subject to clauses 6 and 7.

## **6 Removal of members**

- (1) The Minister may at any time, after consultation with the person concerned, remove a member of the Board from office.
- (2) The removal must be made by written notice to the member (with a copy to the Board).
- (3) The notice must state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received.
- (4) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice.
- (5) To avoid doubt, the Minister may not remove a member unless the Minister has properly considered the matter and complied with the principles of natural justice.

## **7 Resignation of member**

- (1) A member of the Board may resign from office by written notice to the Minister (with a copy to the Board) signed by the member.
- (2) The resignation is effective on receipt by the Minister of the notice or at any later time specified in the notice.
- (3) The Minister must notify the resignation in the *Gazette* as soon as practicable after receiving the notice.

### *Chairperson of Board*

## **8 Term of appointment of chairperson**

The chairperson of the Board holds that office until—

- (a) he or she resigns that office; or
- (b) he or she is removed from it by the Minister; or
- (c) he or she ceases to hold office as a member; or
- (d) the term of office that may have been specified on appointment expires, unless the member is reappointed for a further term.

**9 Resignation of chairperson**

- (1) The chairperson of the Board may, without resigning as a member, resign that office by written notice to the Minister (with a copy to the Board).
- (2) The notice of resignation must state the date on which the resignation takes effect.
- (3) The Minister must notify the resignation in the *Gazette* as soon as practicable after receiving the notice.

**10 Removal of chairperson**

- (1) The Minister may, after consultation with the person concerned, remove a chairperson of the Board from that office with or without also removing that person as a member by written notice to the person (with a copy to the Board).
- (2) The notice of removal must state the date on which the removal takes effect.
- (3) The Minister must notify the removal in the *Gazette* as soon as practicable after giving the notice.

*No compensation for loss of office*

**11 No compensation for loss of office**

A member or chairperson of the Board is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member or chairperson, as the case may be.

*Procedure of Board*

**12 Procedure of Board**

- (1) The Board may regulate its own procedure.
- (2) This clause is subject to clauses 13 to 15.

**13 Meetings**

- (1) The Board or its chairperson must appoint the times and places of meetings of the Board, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson must preside at a meeting if the chairperson is present and not interested (as defined in clause 21(5)) in the matter.
- (3) If the chairperson is not present, or is interested in the matter, the Board must appoint one of its members to preside.
- (4) No business may be transacted at a meeting of the Board if a quorum is not present.
- (5) For the purposes of subclause (4) and clause 14, **quorum** means a majority of the members.

- (6) Each member has 1 vote and, in addition to his or her general vote, the chairperson has a casting vote in the case of an equality of votes.
- (7) A resolution of the Board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.

#### **14 Methods of holding meetings**

A meeting of the Board may be held—

- (a) by a quorum of the members, being assembled together at the time and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication provided that—
  - (i) all of the members who wish to participate in the meeting have access to the technology needed to participate in the meeting; and
  - (ii) a quorum of members can simultaneously communicate with each other throughout the meeting.

#### **15 Unanimous written resolutions**

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.

#### *Individual duties of members*

#### **16 Duty to comply with this Act**

A member must not contravene, or cause the contravention of, or agree to the Board's contravening, this Act.

#### **17 Duty to act with honesty and integrity**

A member must, when acting as a member, act with honesty and integrity.

#### **18 Duty to act in good faith**

A member must, when acting as a member, act in good faith.

#### **19 Duty to act with reasonable care, diligence, and skill**

A member must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the Board; and
- (b) the nature of the action; and

- (c) the position of the member and the nature of the responsibilities undertaken by him or her.

## 20 Duty not to disclose information

- (1) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except—
  - (a) in the performance of the Board's functions; or
  - (b) as required or permitted by law; or
  - (c) in accordance with subclause (2); or
  - (d) in complying with the requirement for members to disclose interests.
- (2) A member may disclose, make use of, or act on the information if—
  - (a) the member is first authorised to do so by the Board or by the Minister; and
  - (b) the disclosure, use, or act in question will not, or will be unlikely to, prejudice the Board.

## 21 Duty to disclose conflict of interest

- (1) A member who is interested in a matter relating to the Board must disclose details of the nature and extent of the interest (including any monetary value of the interest)—
  - (a) to the chairperson of the Board; and
  - (b) in an interests register kept by the Board.
- (2) Disclosure under subclause (1) must be made as soon as practicable after the member becomes aware that he or she is interested.
- (3) A member who is interested in a matter relating to the Board must not vote or take part in any discussion or decision of the Board relating to the matter.
- (4) In this clause, **matter** means the Board's performance of its functions under this Act.
- (5) For the purposes of this clause, a person is **interested** in a matter if he or she—
  - (a) may derive a financial benefit from the matter; or
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, Board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) is otherwise directly or indirectly interested in the matter.
- (6) However, a person is not interested in a matter—

- (a) because he or she receives insurance cover, remuneration, or other benefits authorised under this Act; or
- (b) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act.

## **22 Accountability for individual duties**

- (1) A member is not liable for a breach of an individual duty under this Act.
- (2) However, this clause does not affect—
  - (a) anything in clause 6 or 10 (removal of member or chairperson); or
  - (b) anything else for which the member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach.

### *Immunities and insurance*

## **23 Immunity from civil liability**

- (1) A member is not liable, in respect of an excluded act or omission,—
  - (a) to the Minister, unless it is also a breach of an individual duty under any of clauses 16 to 21:
  - (b) to any other person.
- (2) Nothing in this section affects—
  - (a) the liability of any person that is not a civil liability:
  - (b) the right of any person to apply, in accordance with the law, for judicial review.

## **24 Insurance for liability of member, office holder, or employee**

The chief executive may effect insurance cover for a member in relation to his or her acts or omissions, except an act done or omission made that is—

- (a) in bad faith:
- (b) not in the performance or intended performance of the Board's functions.

## **25 Breach of insurance limits**

- (1) A member who is insured by the chief executive in breach of this Act must repay to the chief executive the cost of providing or effecting that insurance cover, to the extent that the insurance cover exceeds that which could have been provided or effected under this Act.
- (2) The chief executive may recover the amount as a debt due in a court of competent jurisdiction.

**26 Definitions for protections from liability**

In clauses 23 to 25,—

**effect insurance** includes pay, whether directly or indirectly, the costs of the insurance

**excluded act or omission** means an act or omission by the member in good faith and in performance or intended performance of the Board's functions

**member** includes a person who was a member at any time after the commencement of this Schedule but who is no longer a member.

*Fees and allowances***27 Fees and allowances**

- (1) The members of the Board are entitled to be paid, in accordance with the fees framework,—
  - (a) fees as determined by the Minister; and
  - (b) reimbursing allowances or actual and reasonable expenses incurred in undertaking the functions and duties of the Board.
- (2) In subclause (1), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

## Charities Amendment Act 2012

Public Act	2012 No 4
Date of assent	24 February 2012
Commencement	see section 2

### **1 Title**

This Act is the Charities Amendment Act 2012.

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **16 Transitional provision for officers**

- (1) This section applies if a person becomes an officer of a charitable entity because of the amendments made to the definition of officer by section 4.
- (2) The charitable entity must ensure that it sends or delivers notice of the change to the Commission or the chief executive.
- (3) The notice must—
  - (a) be in the form prescribed by the Commission or the chief executive (if any); and
  - (b) be accompanied by a document in the form prescribed by the Commission or the chief executive that is signed by, or on behalf of, the person who became an officer and that contains a certification that the person is not disqualified under section 16 of the principal Act from being an officer of the entity; and
  - (c) contain, or be accompanied by, any other information or documentation prescribed by the Commission or the chief executive; and
  - (d) specify the date of commencement of this Act as the effective date of the change; and
  - (e) be sent or delivered to the Commission or the chief executive together with, or as part of, the first annual return to be provided by the charitable entity under section 41 of the principal Act after the commencement of this Act.
- (4) This section overrides section 40(1)(c) of the principal Act and, until the notice is sent or delivered, section 24(1)(d) of that Act.
- (5) A term or expression that is used in this section and is defined in the principal Act has the meaning given by that Act.

Section 16(2): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(3)(a): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(3)(b): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(3)(c): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

Section 16(3)(e): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **17 Transitional provision for information or documentation received**

- (1) This section applies if, before the commencement of this Act, the Commission received any information or documentation that complied with the principal Act's requirements when it was received.
- (2) The Commission or the chief executive, as the case may be, must deal with the information or documentation as if the principal Act had not been amended by this Act.

Section 17(2): amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).

### **18 Transitional provision for Commission prescribing form or requirement**

The Commission or the chief executive, as the case may be, may satisfy the requirement for consultation under section 42(3) or 72A(6) of the principal Act even if the consultation occurs before the commencement of this Act.

Section 18: amended, on 1 July 2012, by section 16(2) of the Charities Amendment Act (No 2) 2012 (2012 No 43).



## **Charities Amendment Act (No 2) 2012**

Public Act	2012 No 43
Date of assent	6 June 2012
Commencement	see section 2

### **1 Title**

This Act is the Charities Amendment Act (No 2) 2012.

### **2 Commencement**

This Act comes into force on 1 July 2012.

### **3 Principal Act amended**

This Act amends the Charities Act 2005.

### *Provisions relating to disestablishment of Charities Commission*

### **9 Disestablishment of Charities Commission**

The Charities Commission is disestablished.

### **10 Compensation**

No member of the Charities Commission is entitled to compensation for loss of office resulting from the disestablishment of the Commission.

### **11 Transfer of property and liabilities of Commission**

On the commencement of this section,—

- (a) all real and personal property of the Charities Commission and all rights and liabilities of the Commission vest in the Crown; and
- (b) all proceedings pending by or against the Commission may be continued, completed, or enforced by or against the Crown; and
- (c) the Commission's work in progress may be carried on and completed by the chief executive or the Board.

### **12 Restriction of compensation for technical redundancy**

(1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Charities Commission has ceased to exist if—

- (a) the position ceases to exist as a result of a transfer of functions from the Commission to the chief executive; and
- (b) in connection with that transfer of functions,—
  - (i) the employee is offered equivalent employment in the department (whether or not the employee accepts the offer); or

- (ii) the employee is offered, and accepts, other employment in the department.
- (2) In this section, **equivalent employment** to the employee's employment in the Charities Commission is employment in the department—
- (a) in substantially the same position; and
  - (b) in the same general locality; and
  - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
  - (d) on terms that treat the period of service with the Commission (and any other period of service recognised by the Commission as continuous service) as if it were continuous service with the department.
- (3) This section overrides Part 6A of the Employment Relations Act 2000.

### **13 Application of collective agreements to employees**

- (1) This section limits which employees may be bound by a collective agreement that binds the chief executive of the Charities Commission before a transfer of functions from the Commission to the chief executive of the department and that, as a consequence of section 11, binds the chief executive of the department after that transfer of functions.
- (2) After that transfer of functions, the only employees of the department who are entitled to be bound by or enforce the collective agreement are those employees who are appointed to a position in the department that has been established (whether or not previously existing in the Commission) to enable the chief executive to perform the transferred functions.
- (3) Subsection (2) does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- (4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

### **14 Superannuation**

- (1) Any employee of the Charities Commission who, immediately before becoming an employee of the department, is a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Govern-

ment service so long as he or she continues to be an employee of the department.

- (2) Subsection (1) does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.
- (3) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the department is the controlling authority.

## **15 Other savings and transitional matters**

The Governor-General may, by Order in Council, provide for savings and transitional matters connected with the disestablishment of the Charities Commission, including the transfer of functions formerly carried out by the Commission.

# Financial Reporting (Amendments to Other Enactments) Act 2013

Public Act	2013 No 102
Date of assent	3 December 2013
Commencement	see section 2

## 1 Title

This Act is the Financial Reporting (Amendments to Other Enactments) Act 2013.

## 2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (2) To the extent that it is not previously brought into force under subsection (1), the rest of this Act comes into force on 1 April 2017.
- (3) In this section, **provision** includes any item, or any part of an item, in any of the schedules.

Section 2(1): sections 18–22 brought in force, on 1 April 2015, by clause 3(2) of the Financial Reporting Legislation Commencement Order 2014 (LI 2014/52).

Section 2(1): this Act (other than sections 18–22) brought into force, on 1 April 2014, by clause 3(1) of the Financial Reporting Legislation Commencement Order 2014 (LI 2014/52).

## 3 Overview

This Act makes amendments to other enactments in connection with the Financial Reporting Act 2013.

### *Amendments to Charities Act 2005*

## 18 Principal Act

Sections 19 to 21 amend the Charities Act 2005 (the **principal Act**).

## 22 Transitional provision

- (1) The Charities Act 2005, as amended by sections 19 to 21, applies to a charitable entity in relation to accounting periods that commence on or after the commencement of this section.
- (2) The Charities Act 2005, as in force before the commencement of this section, continues to apply to a charitable entity in relation to accounting periods that commenced before the commencement of this section as if this Act and the Financial Reporting Act 2013 had not been enacted.

## Reprints notes

### 1 *General*

This is a reprint of the Charities Act 2005 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Counter-Terrorism Legislation Act 2021 (2021 No 37): section 57

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Charities Amendment Act 2017 (2017 No 1)

Charities Amendment Act 2014 (2014 No 63)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): sections 19–21

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Legislation Act 2012 (2012 No 119): section 77(3)

Charities Amendment Act (No 2) 2012 (2012 No 43)

Charities Amendment Act 2012 (2012 No 4)

Criminal Procedure Act 2011 (2011 No 81): section 413

Terrorism Suppression Amendment Act 2007 (2007 No 102): section 46

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Securities Amendment Act 2006 (2006 No 46): section 25

Charities Act Commencement Order 2006 (SR 2006/300)