



**SPORT
NEW ZEALAND**
IHI AOTEAROA

Charities Amendment Act 2023- changes to the Charities Act 2005

July 2023

Background

The [Charities Act 2005](#) (Act) provides a registration, reporting and monitoring system for approximately 28,000 registered entities that carry out charitable purposes.¹ A charity must be “wholly and exclusively” charitable and meet all the requirements under the Act to qualify for registration and the charitable tax exemption.²

The Charities Amendment Act 2023 received royal assent on 5 July 2023. Its objective is to “make practical changes to support charities to continue their vital contribution to community well-being, while ensuring that contribution is sufficiently transparent to interested parties and the public.”³

What are the key changes under the Act?

Definition of Officers – This definition has been amended to be:

- a person occupying a position in the charitable entity who is able to exercise significant influence over substantial decisions of the entity including trustees, members of a board or governing body and a person occupying another other position (e.g. CEO or treasurer) if that position enables them to exercise such influence; and
- a persons who has powers conferred on them to make decisions that would otherwise fall on the trustees, the board or governing body (regardless of whether the person holds a position in the entity).

This is broadly in line with the new definition of officers in the Incorporated Societies Act 2022.

Qualification of Officers

At least one officer must be 18 years or older and the remaining officers must be at least 16 years old. The disqualifying factors to becoming an officer now include persons who have been convicted of an offence relating to the financing of terrorism.

Review of governance procedures

Charitable entities must review their governance procedures (whether those are set out in its rules, trust deed, constitution or elsewhere) annually. When conducting the review, the charitable entity must consider whether its governance procedures are current, whether they support the entity to achieve its charitable purpose and whether they support the entity to comply with the requirements of the Act. At the date of this article, no guidance has been released about what a governance review should look like.

Reduced financial reporting requirements for small charities

Small charities may be exempted by the Charities Regulator from the External Reporting Board’s reporting standards where they are a “qualifying charitable entity”. A qualifying charitable entity will have to provide an annual return and “minimum financial information”. The threshold of total assets and total operating expenditure that determines an entity is a qualifying charitable entity, and what minimum financial

¹ Charities Amendment Bill, Explanatory note

² [Charities Services | The Charities Act 2005](#)

³ Charities Amendment Bill, Explanatory note, General policy statement.

information means will be set out in the Regulations, which are still to be developed. No timeframe has been given as yet on when the Regulations will be published.

Regulatory decision making

Te Rātā Atawhai (the independent Charities Registration Board) **(the Board)** and the Chief Executive of Te Tari Taiwhenua Department of Internal Affairs are the two regulators under the Act. Charitable entities will have more ability to object to decisions. Regulators must also follow new processes when they exercise powers under the Act, including:

- The Board will be required to publish all declined/deregistration decisions;
- A clear process for charitable entities to object to significant decisions of the Board and Charities Services will be set out; and
- Timeframe for lodging objections and submitting information on certain matters is extended from 20 working days to two months.

Appeals framework

The Taxation Review Authority **(Authority)** will now be the first to hear appeals under the Act. This change is intended to promote accessibility for charitable entities, as it allows them to self-represent, reducing costs. Decisions may be appealed to the High Court, or referred to the High Court on questions of law, or where the Authority decides that the High Court should hear the appeal.

Compliance and enforcement powers

Charities are required to remain qualified for registration - by maintaining their rules, charitable purposes and having officers that are qualified under the Act. Officers' role is to assist the charitable entity to deliver its charitable purpose and comply with its obligations under the Act and any other law that applies to it.

The Board can disqualify an officer for serious wrongdoing (defined as an offence punishable by two or more years of imprisonment) or a significant or persistent breach of obligations, without deregistering the charity.

Resources

[Charities Services](#)

[Charities Services – Sport and Recreation](#)

[Charities Act 2005](#)

[Link to Charities Amendment Act still to come]

Date: current as at 18 July 2023