



Charities Act 2005

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

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.

Part 1 Charities Commission

Preliminary matters

3 Purpose

The purpose of this Act is to—

- (a) establish the Commission as a Crown entity for the purposes of section 7 of the Crown Entities Act 2004;
- (b) state the Commission's functions and powers;
- (c) require the Commission—
 - (i) to have regard to certain matters; and
 - (ii) to comply with certain other obligations;
- (d) provide for the registration of societies, institutions, and trustees of trusts as charitable entities;
- (e) require charitable entities and certain other persons to comply with certain obligations.

4 Interpretation

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

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

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

Commission means the Charities Commission established by section 8

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; or
 - (ii) in any other case, 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.

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.
- (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.

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.

7 Act binds the Crown

This Act binds the Crown.

Establishment of Commission

8 Commission established

This section establishes the Charities Commission.

Nature of Commission

9 Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.

Commission's functions

10 Commission's functions

- (1) The functions of the Commission are to—
 - (a) promote public trust and confidence in the charitable sector; and
 - (b) encourage and promote the effective use of charitable resources; and
 - (c) 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
 - (d) make appropriate information available to assist persons to make registration applications under this Act; and
 - (e) receive, consider, and process applications for registration as charitable entities; and

- (f) ensure that the register of charitable entities is compiled and maintained; and
 - (g) receive, consider, and process annual returns submitted by charitable entities; and
 - (h) supply information and documents in appropriate circumstances for the purposes of the Inland Revenue Acts; and
 - (i) 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
 - (j) 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
 - (k) monitor and promote compliance with this Act, including by taking prosecutions for offences against this Act in appropriate circumstances; and
 - (l) consider, and to report and make recommendations on, any matter (for example, a proposed government policy) relating to charities—
 - (i) that is referred to it by any Minister of the Crown; or
 - (ii) on its own motion; and
 - (m) 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; and
 - (n) carry out any other functions that the Minister may direct the Commission to perform in accordance with section 112 of the Crown Entities Act 2004.
- (2) Without limiting subsection (1), the Commission may perform its functions under subsection (1)(a) to (c), (l), and (m) in relation to any charity regardless of whether or not the charity is registered as a charitable entity.

Membership of Commission

11 Membership of Commission

- (1) The Commission consists of no more than 7, and no fewer than 5, members.
- (2) Members of the Commission are the board for the purposes of the Crown Entities Act 2004.
- (3) Despite clause 1(1) of Schedule 5 of the Crown Entities Act 2004, the Minister must appoint 1 member to be the chairperson of the board.
- (4) The Minister may appoint members under the Crown Entities Act 2004 on and after the commencement of this subsection.

Annual meeting

12 Commission must hold annual meeting

- (1) The Commission must hold at least 1 annual meeting not later than 30 November in each year with the representatives of charitable entities who attend the meeting.
- (2) However, the Commission does not have to hold an annual meeting in the 12-month period after its establishment.
- (3) The Minister or representatives of the Minister, or both the Minister and representatives of the Minister, must attend at least 1 annual meeting in each year in which a meeting is held.
- (4) The Commission may hold an annual meeting in 1 or more areas or regions.
- (5) The Commission must give not less than 30 days' notice of each annual meeting—
 - (a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
 - (b) on a website maintained by, or on behalf of, the Commission.
- (6) At each annual meeting, the Commission must—
 - (a) report on the operation of the Commission during the preceding financial year; and
 - (b) table the financial statements of the Commission for that year; and
 - (c) report on any matters that the Commission has knowledge of that may significantly affect the charitable sector in the current financial year; and

- (d) give a reasonable opportunity for persons who attend the meeting to—
 - (i) ask questions concerning the operation of the Commission during the preceding financial year; and
 - (ii) make submissions to the Commission concerning the operation of the Commission during the preceding financial year; and
 - (iii) ask questions concerning the matters referred to in paragraph (c) and to make submissions to the Commission concerning those matters.
- (7) Nothing in subsection (6) requires the Commission to disclose any information if disclosure of that information would involve a breach of confidence, of trust, of contract, of any enactment, or of any other rule of law.

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 VA 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 34 of the Income Tax Act 2004; 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 35 of the Income Tax Act 2004; 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 VA 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 34 or section CW 35 of the Income Tax Act 2004.
- (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 designated under section 20 or section 22 of the Terrorism Suppression Act 2002 as a terrorist entity or an associated entity; or
 - (b) the entity has been convicted of any offence under sections 7 to 13D of the Terrorism Suppression Act 2002.

14 Commission 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 Commission,—

- (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 Commission may act on the basis of any assumptions concerning the future derivation of income for charitable purposes that, in the opinion of the Commission, are reasonable in the circumstances of the case.

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 Commission is of the opinion, having regard to reasonable assumptions, that the trustees will derive an amount of income in trust for charitable purposes. The Commission is also of the opinion that it is fit and proper to register the trustees. Accordingly, the Commission 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.

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 Commission, the name is not—
 - (i) offensive; or
 - (ii) liable to mislead the public.

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 a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961) and has been sentenced for that crime within the last 7 years:
 - (d) an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies 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 Commission may, by written notice to an entity, 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 Commission 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 Commission thinks fit.
 - (7) The Commission may vary a waiver in the same way as a waiver may be granted under this section.
 - (8) The Commission may, by written notice to an entity, revoke a waiver granted under this section.

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 Commission and must—
 - (a) be in the prescribed form; and
 - (b) be accompanied by a document in the prescribed form, 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 prescribed fee for the application (if any); and
 - (e) contain, or be accompanied by, any other prescribed information or documentation.
- (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.

18 Commission to consider application

- (1) The Commission 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 Commission may request that the applicant supply further information or documentation.
- (3) In considering an application, the Commission 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) a reasonable opportunity to make submissions to the Commission on the matter.
- (4) Despite subsection (1), the Commission is not required to consider an application that has been made in breach of section 31(4).

19 Commission to register entity or decline application

- (1) If, after considering an application, the Commission is satisfied that an entity is qualified to be registered as a charitable entity, the Commission must—
- (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.
- (2) If, after considering an application, the Commission is not satisfied that an entity is qualified to be registered as a charitable entity, the Commission must notify the entity of its decision and the reasons for it.

20 Commission may backdate registration of entity as charitable entity

- (1) The Commission may, if it thinks fit, 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 Commission received a properly completed application for registration of the entity as a charitable entity.
- (3) Before the Commission exercises its powers under subsection (1), the Commission 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 Commission 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 2004, and the Estate and Gift Duties Act 1968.

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 Commission thinks fit.
- (3) The register must be operated at all times unless—
 - (a) the Commission suspends the operation of the register, in whole or in part, in accordance with subsection (4); or
 - (b) otherwise provided in regulations.
- (4) The Commission may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Commission considers that it is not practical to provide access to the register.

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 Commission is registrar of register

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

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 Commission 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 prescribed information or documents.
- (3) This section is subject to section 25.

25 Commission may allow information and documents to be omitted or removed from register and may restrict public access to information and documents

- (1) The Commission 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 Commission considers, in the public interest, that the information or documents should not form part of the register.
- (2) The Commission 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 Commission 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 Commission 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.

26 Amendments to register

The Commission 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 Commission; or
- (c) for the purposes of section 25; or
- (d) to comply with any order made under section 60 or section 61.

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 prescribed criteria.

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 66 of the Privacy Act 1993.

Supply of register information and documents

30 Commission may supply register information or documents for purposes of Inland Revenue Acts

- (1) The Commission 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 Commission, 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.

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 section KC 5 of the Income Tax Act 2004.

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 section KC 5 of the Income Tax Act 2004. The information contained in the application for registration of the society as a charitable entity could assist in this process.

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

*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 Commission registers a notice 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 Commission 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.

32 Grounds for removal from register

- (1) The Commission may remove an entity 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 Commission 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.

33 Notice of intention to remove from register

- (1) The Commission 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 Commission, which

must be not less than 20 working days after the date of the notice.

34 Objection to removal from register

The entity and any officer of the entity may send or deliver to the Commission 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.

35 Duties of Commission if objection received

(1) If an objection to the removal of an entity from the register under section 34 is received by the Commission on or before the date referred to in section 33(2)(d), the Commission must not proceed with the removal unless the Commission 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 Commission on or before the date referred to in section 33(2)(d) and the Commission decides to proceed with the removal of the entity from the register,—

- (a) the Commission must give to the charitable entity notice of—
 - (i) the Commission's decision to proceed with the removal of the entity from the register; and
 - (ii) the reasons for the Commission's decision; and
 - (iii) the entity's right to appeal the decision under section 59; and
- (b) the Commission 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.

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

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 summary conviction to a fine not exceeding \$30,000.

- (2) Proceedings for an offence against subsection (1) may be commenced within 2 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

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 Commission

- (1) Every charitable entity must ensure that it sends or delivers to the Commission 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;
 - (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 prescribed form (if any); and
 - (b) contain, or be accompanied by, any other prescribed information or documentation; and
 - (c) specify the effective date of the change; and
 - (d) be sent or delivered to the Commission 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).

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 Commission.
- (2) The annual returns of charitable entities must be in the form, contain the particulars, and comply with the directions as to the preparation of those returns that are prescribed under section 42.
- (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 Commission 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 Commission before the change is made.

- (6) The Commission may approve a change of balance date with or without conditions.
- (7) Subsection (3)(b) is subject to subsections (5) and (6).

42 Regulations concerning content of annual returns

- (1) The Governor-General may, on the recommendation of the Minister, by Order in Council, 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 order made under subsection (1) may prescribe different requirements for different types or classes of entities.

Exemptions

43 Commission may grant exemptions

- (1) The Commission 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 Commission thinks fit.
- (3) The Commission may vary an exemption in the same way as an exemption may be granted under this section.
- (4) The Commission may, by written notice to an entity, revoke an exemption granted under this section.
- (5) An exemption under this section is not a regulation within the meaning of the Regulations (Disallowance) Act 1989.

Commission may treat entity and affiliated or closely related entities as single entity

44 Commission may treat entity and affiliated or closely related entities as single entity

- (1) The Commission 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 Commission 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 Commission 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 prescribed form (if any).

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 prescribed form (if any).
- (3) The Commission must have regard to a request made under this section when it is setting terms and conditions under section 46.

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

- (1) The Commission 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 Commission 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.
- (2) The Commission must give written notice of those terms and conditions to the parent entity.
- (3) The Commission 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.

- (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.

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 2004; 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.

48 Commission may revoke entity's status as forming part of single entity

- (1) The Commission may revoke an entity's status as forming part of a single entity if—
- (a) the Commission 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 Commission 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 Commission a request for the Commission 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 Commission 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.

49 Commission to observe rules of natural justice

In considering whether to revoke an entity's status as forming part of a single entity, the Commission 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 Commission on the matter.

Inquiries into charitable entities and other persons

50 Inquiries into charitable entities and other persons

- (1) The Commission 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 Commission's 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.

51 Duty to assist

- (1) If the Commission considers it reasonably necessary for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—
 - (a) to supply to the Commission, 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 Commission, 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 Commission as witnesses have in proceedings before a court.

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 summary conviction to a fine not exceeding \$10,000.

- (3) Proceedings for an offence against subsection (2) may be commenced within 6 months after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

53 Commission may supply inquiry information or documents

- (1) The Commission may supply any information or documents that the Commission 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 Commission under this section for the purposes referred to in subsection (1).
- (3) This section does not limit sections 27 to 30.

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

54 Commission may give warning notices

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

55 Commission may publish details of possible breach, possible serious wrongdoing, and other matters

- (1) This section applies if the Commission considers that the entity or person to whom the notice is given under section 54 has failed to remedy 1 or more of the matters that caused the Commission to give a notice under section 54 by the date referred to in section 54(3)(d).
- (2) The Commission 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 Commission 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 Commission has taken, or is considering taking, in relation to those matters;
 - (d) a summary of the grounds for the Commission's opinion.
- (3) However,—
- (a) before the Commission exercises its powers under subsection (2), the Commission must give to the charitable entity or person notice of—
 - (i) the Commission's decision to publish a notice under this section; and
 - (ii) the reasons for the Commission's decision; and
 - (iii) the entity's or person's right to appeal the decision under section 59; and
 - (b) the Commission 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.

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

56 Notices

- (1) Any notice given by the Commission under any of sections 33, 35, 51, 54, or 55 is sufficiently given if—
- (a) it is in writing; and
 - (b) it is—
 - (i) under the seal of the Commission; or
 - (ii) signed by the chairperson of the board of the Commission; or
 - (iii) signed by 1 or more of the members of the Commission; or
 - (iv) signed by any person purporting to act by direction of the Commission; 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 Commission to represent the person or persons primarily concerned.
- (2) In all courts and in all proceedings under this Act, notices given under any of sections 33, 35, 51, 54, or 55 that purport to be signed by, or on behalf of, the Commission or to be sealed with the seal of the Commission must be treated as

having been signed or sealed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

57 Service of notices

- (1) Any notice that is authorised to be served on, or given to, any person for the purposes of any of sections 33, 35, 51, 54, or 55 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 Commission 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 Commission, be treated as service on all persons who are officers of the entity, or who are represented on the entity by those officers.

Administrative penalties

58 Commission may require payment of administrative penalty

- (1) The Commission may, by written notice to a charitable entity, require the entity to pay to the Commission an amount prescribed by regulations by way of penalty for—
 - (a) a failure by the charitable entity to send or deliver to the Commission 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 Commission 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 Commission by the date for payment specified in the notice; and
 - (b) are recoverable by the Commission in any court of competent jurisdiction as a debt due to the Commission.

Appeals against decisions of Commission

59 Right of appeal

- (1) A person who is aggrieved by a decision of the Commission 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 Commission 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 Commission of the issues in the appeal; and
 - (c) the relief sought.

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 Commission 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 Commission 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 Commission 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 Commission as soon as practicable.

61 Determination of appeal

- (1) In determining an appeal, the High Court may—
 - (a) confirm, modify, or reverse the decision of the Commission or any part of it;
 - (b) exercise any of the powers that could have been exercised by the Commission 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.

Part 3

Miscellaneous matters and amendments to other Acts

Subpart 1—Miscellaneous matters relating to Commission

Reporting obligations

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

- (1) The reporting requirements and provisions that would have applied if the Crown Entities Act 2004 and the Public Finance Amendment Act 2004 had not been enacted apply to the Commission in respect of the financial year commencing on 1 July 2005, rather than the reporting requirements and provisions enacted by the Crown Entities Act 2004.
- (2) Therefore, for example, the Commission must comply, in respect of that financial year, with the requirements relating to annual financial statements, annual reports, statements of intent, and audits that were in the Public Finance Act 1989 immediately before the commencement of the Public Finance Amendment Act 2004.
- (3) For the purposes of this section, the Commission must be treated as if it were named in Schedules 4, 5, and 6 of the Public Finance Act 1989 as in force immediately before the commencement of the Public Finance Amendment Act 2004.
- (4) Despite subsections (1) and (2), section 152 of the Crown Entities Act 2004 applies in respect of the financial year commencing on 1 July 2005.

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

Despite section 195 of the Crown Entities Act 2004, the following apply to the Commission on and after the commencement of this section:

- (a) section 158 of that Act; and
- (b) every notice published in the *Gazette* for the purposes of section 158 of that Act (unless under the terms of the notice, the notice does not apply to the Commission); and
- (c) every regulation made for the purposes of section 158 of that Act (unless under the terms of the regulation, the regulation does not apply to the Commission).

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

Section CW 34 of the principal Act is amended by inserting, after subsection (1), the following heading and subsection:

“Exclusion: trustees, society, or institution not registered

“(1B) This section does not apply to an amount of income if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, registered as a charitable entity.”

66 Charities: business income

Section CW 35(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) the trustee or trustees of the trust, the society, or the institution is or are, at the time that the income is derived, registered as a charitable entity; and”.

67 Charitable bequests

Section CW 36 of the principal Act is amended by adding the following heading and subsections:

“Registration as charitable entity not required until end of income year that follows income year in which deceased died

- “(4) An amount of income derived by a deceased’s executor or administrator that is derived during the period beginning on the deceased’s date of death and ending at the end of the income year that follows the income year in which the deceased died is not prevented from being exempt income under this section merely because the trustee or trustees of the trust, the society, or the institution is not, or are not, registered as a charitable entity.
- “(5) For the purposes of subsection (4), until the end of the income year that follows the income year in which the deceased died, the requirements in sections CW 34 and CW 35 for the trustee or trustees of the trust, the society, or the institution to be registered as a charitable entity must be disregarded when applying those sections for the purposes of this section.
- “(6) This section does not apply to an amount of income derived after the end of the income year that follows the income year in which the deceased died if, at the time that the amount of income is derived, the trustee or trustees of the trust, the society, or the institution is not, or are not, registered as a charitable entity.”

68 Definitions

Section OB 1 of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

“registered as a charitable entity means registered as a charitable entity under the Charities Act 2005”.

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

Section 3(1) of the principal Act is amended by inserting, after the definition of **challenge**, the following definition:

“**Charities Commission** means the Charities Commission established under Part 1 of the Charities Act 2005”.

71 Officers to maintain secrecy

Section 81(4) of the principal Act is amended by inserting, after paragraph (fa), the following paragraph:

- “(fb) communicating to any person, being a member, an employee, or an agent of the Charities Commission, any information, being information—
- “(i) that the person is authorised by the Charities Commission to receive; and
 - “(ii) that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable that person to carry out any duty lawfully conferred on that person relating to the exercise of the Charities Commission’s powers or the performance of its functions and duties:”.

Subpart 4—Amendment to Estate and Gift Duties Act 1968

72 Exemption for gifts to charities and certain bodies

Section 73(1) of the Estate and Gift Duties Act 1968 is amended by adding the words “if, at the time that the gift is made, the society, institution, or trustees of the trust is or are registered as a charitable entity under the Charities Act 2005”.

Subpart 5—Miscellaneous provisions

73 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing forms for the purposes of this Act, and prescribing—
 - (i) the inclusion in, or attachment to, forms of specified information or documents;
 - (ii) forms to be signed by specified persons;
 - (b) prescribing requirements with which documents sent or delivered for registration must comply;
 - (c) prescribing fees payable to the Commission in respect of any matter under this Act or the manner in which fees may be calculated:

- (d) prescribing amounts payable to the Commission 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) Without limiting subsection (1)(a), forms prescribed under this section may require the inclusion in, or attachment to, forms of information or documents for the purpose of assisting any person in the exercise of the person's powers in connection with section KC 5 of the Income Tax Act 2004 or in the performance of the person's functions in connection with that section (regardless of whether or not that information or documentation is collected for the purposes of this Act).
- (3) The Commission may refuse to perform a function or exercise a power until the prescribed fee is paid.
- (4) Any Order in Council made under subsection (1) may authorise the Commission to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee or amount payable in relation to any person or class of persons.
- (5) Any fee or amount payable to the Commission is recoverable by the Commission in any court of competent jurisdiction as a debt due to the Commission.

74 Prosecution of offences

- (1) An information in respect of an offence against this Act must be laid by the Commission or a person authorised by the Commission (the **authorised person**).
- (2) Before an information in respect of an offence against this Act is laid against a person, the Commission or the authorised

person must lay the facts of the case, so far as the Commission or the authorised person is acquainted with them, before a Crown Solicitor.

- (3) The Commission or the authorised person may lay an information 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 Commission 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.

75 No obligation on Commission or any other person to supervise

This Act does not impose on the Commission 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.

76 Amendments to other Acts

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

s 76

Schedule Amendments to other Acts

Crown Entities Act 2004 (2004 No 115)

Insert in Part 2 of Schedule 1, in its appropriate alphabetical order:
Charities Commission.

Incorporated Societies Act 1908 (1908 No 212)

Repeal section 23(4) and substitute:

- “(4) Nothing in this section applies to a society that is—
- “(a) an issuer within the meaning of section 4 of the Financial Reporting Act 1993; or
 - “(b) a charitable entity within the meaning of section 4 of the Charities Act 2005.”

Ombudsmen Act 1975 (1975 No 9)

Insert in Part 2 of Schedule 1, in its appropriate alphabetical order:
Charities Commission.

Legislative history

23 March 2004	<i>Introduction</i> (Bill 108-1)
30 March 2004	First reading and referral to Social Services Committee
17 December 2004	Reported from Social Services Committee (Bill 108-2)
12 April 2005	Second reading, committee of the whole House, third reading
20 April 2005	Royal assent

This Act is administered in the Department of Internal Affairs.
