

Charities Law advice on personal liability associated with charities registration (27 March 2015)

Implications of signing the application for registration forms

In order to apply for registration as a charitable entity, each parish must complete an application for registration form,¹ which must be signed by an officer of the entity. Also, each "officer" (as defined)² of the entity must sign an "officer certification form", certifying that they are qualified to be an officer of a charitable entity.

Obviously, the person signing each of these respective forms must be satisfied that they are correct in all respects before signing.

Once signed, and once the parish becomes registered as a charity under the Charities Act 2005, the Charities Act imposes obligations on the charity and on the officers of the charity. These are discussed below. Note that these obligations are additional to the obligations that already fall upon the officers of the respective charitable entities. For example, all officers are responsible for ensuring that the organisation is run in accordance with its rules and the general law.

Additional obligations imposed by the Charities Act 2005:	
1. Duty to notify changes	<p>If any of the following things about the registered charitable entity change, the change must be notified to the charities regulator within 3 months:</p> <ul style="list-style-type: none">- Name, address for service, balance date, rules or purposes of the charitable entity;- Any change in officers (whether as a result of an officer ceasing to hold office, the appointment of a new officer, or a change that disqualifies an officer from being an officer of a charitable entity) <p>Use the Notice of Change form: https://www.charities.govt.nz/im-a-registered-charity/update-charity-details/, unless the change can be notified in time in an annual return (discussed below). The penalty for failure to notify changes on time is \$100,³ which is imposed on the charitable entity.</p>
2. Duty to prepare annual returns	<p>Every registered charitable entity must ensure that an annual return is completed, dated and signed on behalf of the entity, and sent to the charities regulator within 6 months after balance date. Use the annual return form: https://www.charities.govt.nz/im-a-registered-charity/annual-returns/. A copy of the charity's financial statements must be attached. This information then becomes publicly available on the charities register.</p> <p>The penalty for failure to file an annual return on time is \$200,⁴ which is imposed on the charitable entity. Failure to file annual returns can also lead the charities regulator to deregister the entity (which can have significant income tax and other consequences).</p> <p>For accounting periods that commence on or after 1 April 2015, the</p>

¹ <https://www.charities.govt.nz/apply-for-registration/apply-now/>.

² <https://www.charities.govt.nz/apply-for-registration/considering-registering-as-a-charity/officers/>.

³ See sections 40 and 58 of the Charities Act, and regulation 9(1) of the Charities (Fees and Other Matters) Regulations 2006.

⁴ See sections 41 and 58 of the Charities Act, and regulation 9(2) of the Charities (Fees and Other Matters) Regulations 2006.

	<p>financial statements accompanying the annual return must be prepared in accordance with financial reporting standards issued by the External Reporting Board. The charitable entity and every officer commits an offence punishable by a fine of up to \$50,000 if the financial statements fail to comply with an applicable financial reporting standard and the charitable entity or officer knows that at the time the annual return is filed.</p> <p>From 1 April 2015, those financial statements must also be audited (if the total operating expenditure of the entity and all entities it controls is \$1 million or more) or audited or reviewed (if the total operating expenditure of the entity and all entities it controls is \$500,000 or more). The charitable entity commits an offence punishable by a fine of up to \$50,000 if it fails to comply with this requirement</p>
3. Duty to assist	<p>The charities regulator has the power to examine and inquire into charitable entities, and persons connected with charitable entities, including into: activities and proposed activities of the charitable entity or person; the nature, objects and purposes of the charitable entity; the management and administration of the charitable entity; the results and outcomes achieved by the charitable entity or person; and the value, condition, management and application of the property and income belonging to the charitable entity or person. It is an offence punishable by a fine of up to \$10,000 to refuse or fail to supply information or documents requested by the charities regulator, or to knowingly supply false or misleading information or documents.</p>
4. Duty to supply registration number	<p>If a collector who acts on behalf of a registered 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.</p>
5. Grounds for deregistration	<p>Once a charitable entity is registered, the charities regulator has the power to deregister it in certain circumstances, including if:</p> <ul style="list-style-type: none"> - if the entity is no longer qualified for registration as a charitable entity; - there has been a significant or persistent failure by the entity to meet its obligations under the Charities Act or any other Act; - there has been a significant or persistent failure by any 1 or more of the officers of the entity to meet their obligations under the Charities Act; - 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 the Charities Act; - the entity has engaged in serious wrongdoing; - any person has engaged in serious wrongdoing in connection with the entity <p>Serious wrongdoing, in relation to an entity, is defined to include any serious wrongdoing of any of the following types:</p> <ul style="list-style-type: none"> - an unlawful or corrupt use of the funds or resources of the entity; - 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; - an act, omission, or course of conduct that constitutes an offence;

	<ul style="list-style-type: none">- an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement. <p>The Supreme Court also recently stated in <i>Re Greenpeace</i> [2014] NZSC 105 that a charity may be deregistered if it has an illegal purpose (and that such a purpose may be inferred from its activities).</p> <p>As discussed above, deregistration can have significant income tax and other consequences.</p>
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