

Crown Entities Reform Bill

Government Bill

Explanatory note

General policy statement

The Crown Entities Reform Bill is an omnibus Bill providing for machinery of government changes. The purpose of the Bill is to amalgamate the functions of a number of existing agencies to achieve gains in financial efficiencies, effectiveness, and future viability of agencies. These objectives are consistent with the Government's overall direction for the State services portfolio.

The Bill—

- establishes an arm's-length Health Promotion Agency, a Crown agent taking on relevant functions from the Alcohol Advisory Council of New Zealand (ALAC), the Health Sponsorship Council (HSC), and the Ministry of Health, and disestablishes ALAC and HSC; and
- disestablishes the Crown Health Financing Agency (CHFA) and transfers some functions to the Ministry of Health, while other functions continue to be provided by the Treasury's New Zealand Debt Management Office; and
- transfers the functions of the Mental Health Commission (MHC) to the Health and Disability Commissioner (HDC) (including establishing a new Mental Health Commissioner within HDC to carry out advocacy and monitoring functions); and

- disestablishes the Charities Commission, and transfers its functions to the Department of Internal Affairs, with registration and deregistration of charities being carried out by an independent decision-making board of 3 persons.

Clause by clause analysis

It is intended that, at the Committee of the Whole House stage, this omnibus Bill will be divided into the following Bills:

- a New Zealand Public Health and Disability Amendment Bill:
- a Mental Health Commission Amendment Bill:
- a Charities Amendment Bill.

Clause 1 is the Title clause.

Clause 2 provides that the Act comes into force on 1 July 2012.

Part 1 New Zealand Public Health and Disability Act 2000

This Part relates to the establishment of the Health Promotion Agency (HPA) and the disestablishment of the Alcohol Advisory Council, the Health Sponsorship Council, and the Crown Health Financing Agency (CHFA).

Clause 3 provides that this Part amends the New Zealand Public Health and Disability Act 2000 (the **principal Act**).

Clause 4 amends section 5 of the principal Act by adding a subsection that outlines the provisions relating to HPA.

Clause 5 amends section 6 of the principal Act by inserting a definition of HPA.

Clause 6 replaces sections 57 to 59 of the principal Act with *new sections 57 to 59AA* relating to HPA. The sections being replaced relate to CHFA, which is disestablished by this Bill (*see clauses 27 to 34*).

New section 57 establishes HPA as a Crown entity under the Crown Entities Act 2004. An amendment to that Act in *Schedule 3* makes HPA a Crown agent.

HPA's board will have at least 5 but not more than 7 members. The responsible Minister will appoint the members under section 28(1)(a) of the Crown Entities Act 2004.

New section 58 sets out the functions, duties, and powers of HPA. This new entity will replace the Alcohol Advisory Council and the Health Sponsorship Council. Its functions will include leading and supporting the following purposes:

- promoting health and encouraging healthy lifestyles:
- preventing disease, illness, and injury:
- enabling environments that support health and healthy lifestyles:
- giving advice and making recommendations on the misuse and harm of alcohol.

New section 59 carries over for the benefit of HPA—

- provisions in section 9 of the Alcohol Advisory Council Act 1976 relating to the making of grants and advances, and the recovery of publishing costs:
- provisions in sections 42 and 60 of the Smoke-free Environments Act 1990 relating to sponsorship and unspent funds.

New section 59AA provides for levies to enable HPA to recover certain operating costs. The detail relating to the setting of levies is set out in *clause 10* and *new Schedules 4A and 4B* (as inserted into the principal Act by *clause 12*). These levy provisions are carried over from sections 24 to 34 of the Alcohol Advisory Council Act 1976, which will be repealed by *clause 13*.

Clause 7 amends the definition of organisation in section 60 of the principal Act by omitting CHFA and substituting HPA. The effect of this amendment is that sections 60 to 69 of the principal Act (which provide for the application of certain provisions of the Crown Entities Act 2004) will apply to HPA in the same way as they apply to Pharmac and other entities.

Clauses 8 and 9 make consequential amendments to sections 66 and 70 of the principal Act.

Clause 10 relocates in section 92 of the principal Act most of the provisions of section 39 of the Alcohol Advisory Council Act 1976. These are regulation-making powers relating to alcohol levies.

Clause 11 makes consequential amendments to Schedule 6 of the principal Act.

Clause 12 inserts new *Schedules 4A and 4B* into the principal Act. These schedules set out the process for setting alcohol levies to fund some of HPA's operating costs and contain provisions relating to the payment and collection of levies. Sections 25 to 34 of the Alcohol Advisory Council Act 1976 currently contain the provisions on which these schedules are based.

*Provisions relating to disestablishment
of Alcohol Advisory Council and Health
Sponsorship Council*

Clause 13 repeals the Alcohol Advisory Council Act 1976 and continues in force delegated legislation relating to alcohol levies. Future levy orders and associated regulations will be made under the principal Act.

Clause 14 amends the Smoke-free Environments Act 1990 by repealing provisions that relate to the Health Sponsorship Council, which is disestablished by *clause 16*.

Clauses 15 to 26 provide for the disestablishment of the Alcohol Advisory Council and the Health Sponsorship Council, and for the transfer of the property and liabilities of those entities to HPA. Under these provisions, staff of either of those entities or of the Ministry of Health who transfer to HPA will be subject to similar provisions as those in Part 2 of the State Sector Act 1988 that apply following a reorganisation (*see* sections 30E and 30G in particular).

*Provisions relating to disestablishment of
Crown Health Financing Agency*

Clauses 27 to 34 provide for the disestablishment of the Crown Health Financing Agency and the transfer of its property and liabilities to the Crown. Under these provisions, staff who transfer to a department will be subject to similar provisions as those in Part 2 of the State Sector Act 1988 that apply following a reorganisation (*see* sections 30E and 30G in particular) .

Other matters

Clause 35 empowers the making of regulations providing for savings or transitional matters connected with the disestablishment of entities by this Part.

Part 2**Mental Health Commission Act 1998**

This Part relates to the expiry of the Mental Health Commission Act 1998 and the appointment of a Mental Health Commissioner under the Health and Disability Commissioner Act 1994.

Clause 36 provides that this Part amends the Mental Health Commission Act 1998 (the **principal Act**)

Clause 37 changes the time and date of the expiry of the principal Act, as stated in section 13(1) of that Act. The principal Act will now expire on the close of 30 June 2012 rather than at 5 pm on 31 August 2015.

Clause 38 amends the Health and Disability Commissioner Act 1994 to provide for the appointment of a Mental Health Commissioner under that Act and the delegation of functions or powers to the holder of that office. This clause also appoints the chairperson of the Mental Health Commission as the first Mental Health Commissioner.

Clauses 39 and 40 contain a consequential revocation and consequential amendments to other enactments. The amendments include amendments to the Remuneration Authority Act 1977 to make Deputy Health and Disability Commissioners and the Mental Health Commissioner subject to that Act.

Part 3**Charities Act 2005**

This Part disestablishes the Charities Commission and reassigns functions and duties under the Charities Act 2005 to a Board established by *clause 45* and to the chief executive of the Department of Internal Affairs.

Clause 41 provides that this Part amends the Charities Act 2005 (the **principal Act**).

Clause 42 consequentially amends the heading to Part 1 of the principal Act.

Clause 43 replaces section 3 of the principal Act. Section 3 states the purpose of the principal Act and it is necessary to amend it to reflect the changes contained in this Part. New aspects of the statement of purpose include—

- the promotion of public trust and confidence in the charitable sector:
- the encouragement and promotion of the effective use of charitable resources:
- recognition of the role of the chief executive of the department.

Clause 44 amends section 4(1) of the principal Act by repealing the definition of Commission and inserting definitions of Board, chief executive, and department.

Clause 45 replaces sections 8 to 12 of the principal Act. The new sections establish the Board and reassign functions and duties under the Act.

New section 8 establishes a Board of 3 members appointed by the Minister and sets out its functions, duties, and powers. Essentially, the Board will be responsible for deciding matters involving the registration or deregistration of charitable entities. The *new section 8* is based on section 10 of the Research, Science, and Technology Act 2010. Further provisions relating to the Board are set out in the *new Schedule* (as added by *clause 46 and Schedule 7*).

New section 9 enables the Board to delegate its functions, duties, and powers. A similar provision is section 11 of the Research, Science, and Technology Act 2010.

New section 10 sets out the functions of the chief executive. Essentially, the chief executive will be responsible for functions formerly performed by the Charities Commission other than deciding whether an entity should be registered or deregistered.

New section 11 provides that the Board and chief executive may perform certain functions in relation to a charity regardless of whether the charity is registered as a charitable entity. This section is carried over from section 10(2) of the principal Act.

New section 12 requires the chief executive to hold an annual meeting with representatives of charitable entities. A similar provision is currently in section 12 of the principal Act.

Clause 46 adds a *new Schedule* (provisions relating to Board, chairperson, and members) to the principal Act.

*Provisions relating to disestablishment of
Charities Commission*

Clauses 47 to 53 provide for the disestablishment of the Charities Commission and the transfer of its property and liabilities to the Crown. Under these provisions, staff who transfer to the department will be subject to similar provisions as those in Part 2 of the State Sector Act 1988 that apply following a reorganisation (*see* sections 30E and 30G in particular).

Clause 54 makes consequential amendments to the principal Act and other enactments. The amendments are set out in *Schedules 8 and 9*.

Hon Tony Ryall

Crown Entities Reform Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Crown Entities Reform Act **2011**.
- 2 Commencement**
This Act comes into force on **1 July 2012**.

Part 1
New Zealand Public Health and Disability
Act 2000

3 Principal Act amended

This Part amends the New Zealand Public Health and Disability Act 2000. 5

Amendments to principal Act

4 Outline

Section 5 is amended by repealing subsection (7) and substituting the following subsection: 10

“(7) A Crown entity called the Health Promotion Agency (**HPA**) is established (Part 4—**sections 57 to 59**).”

5 Interpretation

(1) Section 6(1) is amended by repealing the definition of **CHFA**.

(2) The definition of **publicly-owned health and disability organisation** in section 6(1) is amended by omitting “CHFA” and substituting “HPA”. 15

(3) Section 6(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**HPA** means the Health Promotion Agency established by **section 57**”. 20

6 New headings and sections 57 to 59AA substituted

Sections 57 to 59 and the heading above section 57 are repealed and the following headings and sections substituted:

Health Promotion Agency 25

57 Health Promotion Agency established

“(1) An organisation called the Health Promotion Agency (**HPA**) is established.

“(2) HPA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 30

“(3) The board of HPA consists of not fewer than 5 and not more than 7 members appointed under section 28 of the Crown Entities Act 2004.

“(4) The Crown Entities Act 2004 applies to HPA except to the extent that this Act expressly provides otherwise.

“**58 Functions, duties, and powers of HPA**

“(1) HPA must lead and support activities for the following purposes: 5

“(a) promoting health and encouraging healthy lifestyles:

“(b) preventing disease, illness, and injury:

“(c) enabling environments that support health and healthy lifestyles:

“(d) reducing personal, social, and economic harm. 10

“(2) HPA has the following alcohol-specific functions:

“(a) giving advice and making recommendations to government, government agencies, industry, non-government bodies, communities, health professionals, and others on the sale, supply, consumption, misuse, and harm of alcohol so far as those matters relate to HPA’s general functions: 15

“(b) undertaking or working with others to research the use of alcohol in New Zealand, public attitudes towards alcohol, and problems associated with, or consequent on, the misuse of alcohol. 20

“(3) Section 103(1) of the Crown Entities Act 2004 does not apply to HPA’s functions under **subsection (2)**, but HPA must have regard to any government policy that relates to those functions if so directed by the Minister. 25

“(4) HPA must also—

“(a) assume the property, rights, and liabilities of the Alcohol Advisory Council and the Health Sponsorship Council that are transferred to HPA by **section 17** of the **Crown Entities Reform Act 2011**; and 30

“(b) undertake any other functions that it is for the time being authorised to perform by the Minister by written notice to the board of HPA after consultation with the board.

“**59 Provisions relating to grants, sponsorship, and other matters** 35

“(1) HPA may—

- “(a) make grants to any body, association, or person engaged in any activity in any field with which HPA is concerned:
- “(b) make advances to any such body, association, or person, on any terms and conditions as to the payment of interest, the repayment of principal, the giving of security, and otherwise that HPA thinks fit: 5
- “(c) charge any fees (if any) that it may from time to time think reasonable for any material published by it and made available to the public: 10
- “(d) without further appropriation by Parliament, spend in any year any funds received by HPA in the previous year and not spent by HPA in the previous year:
- “(e) commit itself to spend any money by way of sponsorship, subject to **subsection (2)**. 15
- “(2) The power to spend money by way of sponsorship is subject to the following limitations:
- “(a) HPA must have the money in hand at the time; and
- “(b) HPA must not, in any year (the **current year**), commit itself to spend by way of sponsorship in the next succeeding year more than 25% of the amount of the money appropriated by Parliament for the purposes of HPA for the current year. 20
- “(3) In this section, **sponsorship** means, in broad terms, the provision of assistance by HPA to any person or organisation and, in return, the promotion by that person or organisation of health and healthy lifestyles in a manner agreed by HPA. 25
- “(4) For the purpose of **subsection (3)**,—
- “(a) such assistance by HPA may (without limitation) take the form of— 30
- “(i) money, whether by way of grant or otherwise; or
- “(ii) goods and services; or
- “(iii) trophies, prizes, awards, and scholarships:
- “(b) such promotion by the person or organisation receiving assistance may (without limitation) take the form of— 35
- “(i) publicising messages relating to health and healthy lifestyles; or
- “(ii) publicising messages relating to ill-health and unhealthy lifestyles; or

“(iii) promoting HPA’s aims and objectives.

“(5) This section (other than **subsection (2)**) does not limit sections 16 and 17 of the Crown Entities Act 2004.

“Levies

“**59AA Levies for alcohol-related purposes** 5

“(1) Levies may be imposed for the purpose of enabling HPA to recover costs it incurs—

“(a) in addressing alcohol-related harm; and

“(b) in its other alcohol-related activities.

“(2) **Schedules 4A and 4B** apply for the purpose of this section.” 10

7 Interpretation

The definition of **organisation** in section 60 is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) HPA.”. 15

8 Pharmac, NZBS, CHFA to operate in financially responsible manner

The heading to section 66 is amended by omitting “**CHFA**” and substituting “**and HPA**”.

9 Further provisions 20

Section 70 is amended by omitting “**CHFA**” and substituting “**HPA**”.

10 Regulations

Section 92 is amended by adding the following subsections:

“(5) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 25

“(a) providing for returns to be made by persons importing into or manufacturing in New Zealand any alcohol, or any class or kind of alcohol, for the purpose of ascertaining the amount of any levy payable under this Act, and providing for the verification of returns: 30

- “(b) exempting any person or class of persons from paying any levy that would otherwise be payable under this Act in any case where the cost of assessing or collecting the levy exceeds the amount payable by way of the levy:
- “(c) amending or replacing the table in **Schedule 4B**, and amending, omitting, or reinserting the description of the method for determining variable rates. 5
- “(6) Regulations under **subsection (5)(c)** may be made only—
- “(a) for the purpose of aligning the rates for classes of alcohol under this Act with the classification system applied to alcoholic beverages under Part B of the Excise and Excise-equivalent Duties Table (as defined in section 76A of the Customs and Excise Act 1996); and 10
- “(b) after consultation with the Minister of Customs.”
- 11 Amendments to Schedule 6 15**
- (1) The heading to Schedule 6 is amended by omitting “CHFA” and substituting “HPA”.
- (2) The definition of **organisation** in clause 1 of Schedule 6 is amended by repealing paragraph (c) and substituting the following paragraph: 20
- “(c) HPA:”.
- 12 New Schedules 4A and 4B inserted**
- The **Schedules 4A and 4B** set out in **Schedules 1 and 2** are inserted after Schedule 4.
- Provisions relating to disestablishment
of Alcohol Advisory Council and Health
Sponsorship Council* 25
- 13 Repeal and revocations relating to Alcohol Advisory Council**
- (1) The Alcohol Advisory Council Act 1976 (1976 No 143) is repealed. 30
- (2) The Alcohol Advisory Council (Schedule Amendment) Order 2009 (SR 2009/142) is revoked.

- (3) The following orders and regulations continue to have effect and may be amended or revoked under the New Zealand Public Health and Disability Act 2000:
- (a) Alcohol Advisory Council Levy Order 2009 (SR 2009/160): 5
 - (b) Alcohol Advisory Council Levy Order 2011 (SR 2011/146):
 - (c) Alcohol Advisory Council Regulations 1978 (SR 1978/1).
- 14 Amendments to Smoke-free Environments Act 1990 relating to Health Sponsorship Council** 10
- (1) This section amends the Smoke-free Environments Act 1990.
 - (2) The definition of **Council** in section 2(1) is repealed.
 - (3) Part 3 is repealed.
- 15 Interpretation** 15
- In **sections 16 to 24**, unless the context otherwise requires,—
- Alcohol Advisory Council** means the Alcohol Advisory Council of New Zealand established by section 3(1) of the Alcohol Advisory Council Act 1976 20
- Health Sponsorship Council** means the Health Sponsorship Council established by section 43(1) of the Smoke-free Environments Act 1990.
- 16 Disestablishment of councils**
- On the commencement of this section,— 25
- (a) the Alcohol Advisory Council and the Health Sponsorship Council are disestablished; and
 - (b) the term of office of the members of those councils ends.
- 17 Transfer of property and liabilities of councils**
- On and from the commencement of this section,— 30
- (a) all real and personal property of the Alcohol Advisory Council and the Health Sponsorship Council vests in HPA free of all trusts; and
 - (b) all rights of those councils vest in HPA; and

- (c) all money payable to either of those councils is payable to HPA; and
- (d) all liabilities of each of those councils vest in HPA; and
- (e) all proceedings pending by or against either of those councils may be continued, completed, or enforced by or against HPA. 5

18 Transfer not gift, supply of goods and services, or disposition for certain purposes

To avoid doubt, anything transferred to HPA by **section 17** is not— 10

- (a) a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:
- (b) a supply of goods and services for the purposes of the Goods and Services Tax Act 1985:
- (c) a sale, disposition, distribution, or transfer of property or liability for the purposes of the Income Tax Act 2007. 15

19 Compensation

No member of the Alcohol Advisory Council or the Health Sponsorship Council is entitled to compensation for loss of office resulting from the disestablishment of the council. 20

20 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 Alcohol Advisory Council, the Health Sponsorship Council, or the Ministry of Health has ceased to exist if— 25
 - (a) the position ceases to exist as a result of a transfer of functions from the council to HPA; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is offered equivalent employment in HPA (whether or not the employee accepts the offer); or 30
 - (ii) the employee is offered, and accepts, other employment in HPA.
- (2) In this section, **equivalent employment** to the employee's employment in the Alcohol Advisory Council, the Health Spon- 35

sponsorship Council, or the Ministry of Health is employment in HPA—

- (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 5
 - (d) on terms that treat the period of service with the council (and any other period of service recognised by the council as continuous service) as if it were continuous service with HPA. 10
- (3) This section overrides Part 6A of the Employment Relations Act 2000. 15

21 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 Alcohol Advisory Council or of the Health Sponsorship Council before a transfer of functions from those councils to HPA and that, as a consequence of **section 17**, binds the chief executive of HPA after that transfer of functions. 20
- (2) After that transfer of functions, the only employees of HPA who are entitled to be bound by or enforce the collective agreement are those employees who are appointed to a position in HPA that has been established (whether or not previously existing in any of those councils) to enable HPA to perform the transferred functions. 25
- (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. 30
- (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. 35

- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

22 Superannuation

- (1) Any employee of the Alcohol Advisory Council, the Health Sponsorship Council, or the Ministry of Health who, immediately before becoming an employee of HPA, 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 Government service so long as he or she continues to be an employee of HPA. 5 10
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of HPA were Government service.
- (3) **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. 15
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of HPA is the controlling authority. 20

23 Consequential changes to references to former councils

If an enactment or other thing refers to the Alcohol Advisory Council or the Health Sponsorship Council and that reference is no longer appropriate because the council referred to has been disestablished, the reference must be read as a reference to HPA. 25

24 Consequential changes to references to chief executives following reorganisatio

If an enactment or other thing refers to a chief executive of the Alcohol Advisory Council or of the Health Sponsorship Council and that reference is no longer appropriate because the council referred to has been disestablished, the reference must be read as a reference to the chief executive of HPA. 30

- 25 Application of consequential changes to references**
- (1) **Sections 23 and 24—**
- (a) apply to things that are in force or existing at the time of the disestablishment of the council (whether coming into force, entered into, or created before or after the commencement of this section); and 5
- (b) apply to references in anything, including (without limitation) deeds, agreements, proceedings, instruments, documents, and notices.
- (2) An Order in Council made under **section 35** may apply **sections 23 and 24** to things also coming into force, entered into, or created during a transitional period after the disestablishment of the council that is specified in the order. 10
- (3) **Sections 23 and 24—**
- (a) apply to collective employment agreements; but 15
- (b) do not apply to individual employment agreements.
- 26 Consequential amendments**
- The Acts specified in **Schedule 3** are amended in the manner indicated in that schedule.
- Provisions relating to disestablishment of
Crown Health Financing Agency* 20
- 27 Disestablishment of Crown Health Financing Agency**
- On the commencement of this section, the Crown Health Financing Agency is disestablished.
- 28 Transfer of property and liabilities of Crown Health Financing Agency** 25
- On and from the commencement of this section,—
- (a) all real and personal property of the Crown Health Financing Agency (the **Agency**) vests in the Crown free of all trusts; and 30
- (b) all rights of the Agency vest in the Crown; and
- (c) all money payable to the Agency is payable to the Crown; and
- (d) all liabilities of the Agency vest in the Crown; and

- (e) all proceedings pending by or against the Agency may be continued, completed, or enforced by or against the Crown.

29 Transfer not gift, supply of goods and services, or disposition for certain purposes 5

To avoid doubt, anything transferred to the Crown by **section 28** is not—

- (a) a dutiable gift for the purposes of the Estate and Gift Duties Act 1968;
- (b) a supply of goods and services for the purposes of the Goods and Services Tax Act 1985: 10
- (c) a sale, disposition, distribution, or transfer of property or liability for the purposes of the Income Tax Act 2007.

30 Compensation

No member of the Crown Health Financing Agency is entitled to compensation for loss of office resulting from the disestablishment of the Agency. 15

31 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 Crown Health Financing Agency has ceased to exist if— 20

- (a) the position ceases to exist as a result of a transfer of functions from the Agency to a department; and
- (b) in connection with that transfer of functions,— 25
- (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 Crown Health Financing Agency is employment in the department— 30

- (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 im- 35

- mediately 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 Agency (and any other period of service recognised by the Agency as continuous service) as if it were continuous service with the department. 5
- (3) This section overrides Part 6A of the Employment Relations Act 2000.
- 32 Application of collective agreements to employees** 10
- (1) This section limits which employees may be bound by a collective agreement that bind the chief executive of the Crown Health Financing Agency before a transfer of functions from the Agency to a department and that, as a consequence of **section 28**, binds the chief executive of the department after that transfer of functions. 15
- (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 Agency) to enable the department to perform the transferred functions. 20
- (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. 25
- (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. 30
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

33 Superannuation

- (1) Any employee of the Crown Health Financing Agency who, immediately before becoming an employee of a 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 Government service so long as he or she continues to be an employee of the department. 5
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of the Agency were Government service. 10
- (3) **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.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the department is the controlling authority. 15

34 Consequential amendments

The Acts specified in **Schedule 4** are amended in the manner indicated in that schedule. 20

*Other matters***35 Other savings and transitional matters**

The Governor-General may, by Order in Council, provide for savings and transitional matters connected with the disestablishment of an entity under this Part, including the transfer of functions formerly carried out by the entity. 25

Part 2**Mental Health Commission Act 1998****36 Principal Act amended**

This Part amends the Mental Health Commission Act 1998. 30

*Amendment to principal Act***37 Expiry and repeal of Act**

Section 13 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) This Act expires on the close of 30 June 2012.” 5

*Other amendments***38 Amendments to Health and Disability Commissioner Act 1994**

- (1) This section amends the Health and Disability Commissioner Act 1994. 10

- (2) Section 9 is repealed and the following section substituted:

“9 Deputy Commissioners and Mental Health Commissioner

- “(1) One or more Deputy Health and Disability Commissioners may be appointed in the same way as the Commissioner is appointed, except that the Minister must consult the Commissioner before recommending a person for appointment as a Deputy Commissioner. 15

- “(2) A person may be appointed as the Mental Health Commissioner in the same way as the Commissioner is appointed, except that the Minister must consult the Commissioner before recommending a person for appointment as the Mental Health Commissioner. 20

- “(3) A person who is a Deputy Commissioner or the Mental Health Commissioner has any powers, duties, and functions that—

“(a) the Commissioner delegates to him or her under section 68(3A); and 25

“(b) he or she may exercise and perform under **subsection (4)**.

- “(4) During the absence of the Commissioner from duty (for any reason) or a vacancy in the office of the Commissioner (for any reason), the powers, duties, and functions of the Commissioner may be exercised and performed by— 30

“(a) a person appointed under this section who is nominated for the purpose by the Commissioner before the absence or vacancy by a written notice that is in force at the time of the absence or vacancy; or 35

- “(b) if there is no such notice, the longest serving person appointed under this section.”
- (3) Section 14(1) is amended by inserting the following paragraph after paragraph (m):
- “(ma) to monitor mental health and addiction services and to advocate improvements to those services:”.
- (4) Section 68(2) is amended by inserting “or the Mental Health Commissioner” after “a Deputy Commissioner”.
- (5) Clause 4(5) of Schedule 2 is amended by inserting “or the Mental Health Commissioner” after “Deputy Commissioner”. 10
- (6) The person who, immediately before the commencement of this section, was the chairperson of the Mental Health Commission is deemed to have been appointed as the first Mental Health Commissioner until the close of 31 August 2015 and holds that new office on the same terms and conditions as he or she held that former office (as if determined by the Remuneration Authority). 15
- 39 Revocation**
The Mental Health Commission Act (Postponement of Expiry) Order 2004 (SR 2004/84) is revoked. 20
- 40 Consequential amendments**
- (1) The Remuneration Authority Act 1977 is amended in the manner indicated in **Schedule 5**.
- (2) On the expiry of the Mental Health Commission Act 1998, the Acts specified in **Schedule 6** are amended in the manner indicated in that schedule. 25

Part 3 Charities Act 2005

- 41 Principal Act amended**
This Part amends the Charities Act 2005. 30

Amendments to principal Act

- 42 Heading to Part 1 amended**
The heading to Part 1 is amended by omitting “**Charities Commission**” and substituting “**Preliminary matters and functions relating to charities**”. 5
- 43 New section 3 substituted**
Section 3 is repealed and the following section substituted:
- “3 Purpose**
The purpose of this Act is—
- “(a) to promote public trust and confidence in the charitable sector: 10
 - “(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: 15
 - “(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: 20
 - “(f) to provide for the chief executive to carry out functions under this Act and to meet requirements imposed in relation to those functions.”
- 44 Interpretation** 25
- (1) The definition of **Commission** in section 4(1) is repealed.
 - (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 - “**Board** means the board established by **section 8**
 - “**chief executive** means the chief executive of the department 30
 - “**department** means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.

45 New heading and sections 8 to 12 substituted

Sections 8 to 12 and the headings above those sections are repealed and the following heading and sections substituted:

*“Board and chief executive***“8 Establishment, functions, duties, and powers of Board** 5

“(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. 10

“(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— 15

“(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 20 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 25 its functions, duties, and powers.

“(7) The **Schedule** applies to the Board and to the members and chairperson of the Board.

“9 Board may delegate

“(1) The Board may, either generally or particularly and by resolution, delegate any of its functions, duties, or powers under 30 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)**,— 35

- “(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 section 41 of the State Sector Act 1988. 5
- “(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. 10
- “(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. 15
- “**10 Functions of chief executive** 20
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: 25
- “(ii) by issuing model rules:
- “(iii) by providing information to charities about their rights, duties, and obligations under this Act and other enactments; and 30
- “(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 35
- “(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 5
- “(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 10
- “(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 15
- “(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,— 20
- “(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: 25
- “(iii) by entering into contracts or arrangements for research or information about charities to be undertaken or collected.
- “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. 30
- “(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 35
- “(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. 5
- “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 10 to—
- “(a) ask questions concerning the operation of this Act; and
- “(b) make submissions on the operation of this Act to the chief executive.”
- 46 New Schedule added 15**
- The **Schedule** set out in **Schedule 7** of this Act is added.
- Provisions relating to disestablishment of Charities Commission*
- 47 Disestablishment of Charities Commission 20**
- The Charities Commission is disestablished.
- 48 Compensation**
- No member of the Charities Commission is entitled to compensation for loss of office resulting from the disestablishment of the Commission.
- 49 Transfer of property and liabilities of Commission 25**
- 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 30 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.

50 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.

51 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 49**, 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. 5
- (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. 10
- (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. 15
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise. 20

52 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 Government service so long as he or she continues to be an employee of the department. 25
- (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. 30
- (3) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of the department is the controlling authority.

53 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.

5

54 Consequential amendments

(1) The principal Act is amended in the manner indicated in **Schedule 8**.

(2) The Acts specified in **Part 1 of Schedule 9** are amended in the manner indicated in that schedule.

10

(3) The Charities (Fees, Forms, and Other Matters) Regulations 2006 are amended in the manner indicated in **Part 2 of Schedule 9**.

	Schedule 1	s 12
	New Schedule 4A inserted	
	Schedule 4A	s 59AA
	Provisions relating to the imposition and payment of HPA levies	5
	Interpretation	
(1)	In this schedule, unless the context otherwise requires,—	
	aggregate expenditure figure , in relation to any financial year, means the aggregate expenditure figure assessed in respect of that year by the Minister under clause 2(1)	10
	aggregate levy figure , in relation to any financial year, means the aggregate levy figure determined in respect of that year by the Minister under clause 2(2)	
	beer means the product of the alcoholic fermentation by yeast of liquid derived from a mash of drinking water and malt grains with hops or their extracts that on analysis is found to contain more than 1.15% volume of alcohol	15
	class of alcohol means a class of alcohol as identified in the table in Schedule 4B	
	HPA means the Health Promotion Agency established by section 57	20
	preceding statistical year means the latest complete period of 12 consecutive months in respect of which, at any material time, the following information is available to the Minister, that is, the total number of litres of each class of alcohol imported into, and manufactured in, New Zealand during that period	25
	spirits means ethyl alcohol, whether denatured or not, and any spirituous beverages, including brandy, gin, rum, vodka, whisky, and every other description of spirituous alcohol derived from ethyl alcohol	30
	wine means the product of the complete or partial fermentation of any fruit (including grapes), vegetable, or honey, and—	
	(a) includes—	
	(i) cider, perry, and mead; and	35
	(ii) fortified wines such as sherry, port, and fruit or vegetable-based alcohols; but	

Schedule 4A—*continued*

- (b) does not include—
 - (i) beer or spirits; or
 - (ii) any alcohol containing no more than 1.15% volume of alcohol

winemaker has the same meaning as in the Wine Act 2003. 5

- (2) For the purposes of **clauses 3 and 5**, where any wine manufactured in New Zealand is sold to another winemaker for blending with other wine, the wine so sold is deemed to be manufactured by the person who blends it, and not by its original maker. 10
- (3) For the purposes of **clause 3(2)**, the total number of litres of wine manufactured in New Zealand during any statistical year is deemed to be the same as the total number of litres of wine sold by winemakers during that year.
- (4) For the purposes of **clauses 5 and 6**, the total number of litres of wine sold in New Zealand during any financial year is deemed to be the same as the total number of litres of wine sold in New Zealand during the preceding statistical year. 15
- (5) For the purposes of **clause 3(2) and Schedule 4B**, alcohol that is exported from New Zealand during the preceding statistical year is not to be treated as alcohol that is imported into or manufactured in New Zealand. 20

2 **Minister to assess aggregate expenditure figure and determine aggregate levy figure**

- (1) For each financial year, the Minister, acting with the concurrence of the Minister of Finance, must assess the aggregate expenditure figure for that year that, in his or her opinion, would be reasonable for HPA to expend during that year—
 - (a) in addressing alcohol-related harm; and
 - (b) in meeting its operating costs that are attributable to alcohol-related activities. 30
- (2) Having assessed the aggregate expenditure figure for any financial year under **subclause (1)**, the Minister must determine the aggregate levy figure for that year, being an amount equal to the aggregate expenditure figure less the amount that, 35

Schedule 4A—*continued*

in his or her opinion, is likely to be received by HPA during the financial year by way of interest on money invested by HPA or from third party or other revenue.

- (3) Nothing in this clause obliges HPA to expend in any financial year the whole of its income received in that year, and HPA may accumulate any part of its income in any financial year and expend it as it sees fit for any of its purposes in any subsequent financial year. 5
- (4) Despite **subclause (2)**, if HPA carries forward any such amount to a subsequent financial year, the Minister may, in determining the aggregate levy figure for that year, take into account the whole or any part of that amount. 10

3 Minister to determine amounts of levy for each class of alcohol

- (1) After assessing the aggregate levy figure for any financial year, the Minister must determine, in accordance with **subclause (2)**, the amounts of the levies payable under **clause 5**, in respect of each class of alcohol, in order to yield an amount equivalent to the aggregate levy figure. 15
- (2) The process for determining the amounts of levy is as follows: 20
- (a) *Step 1*—for each class of alcohol, determine the total number of litres of that class of alcohol that was imported into or manufactured in New Zealand during the preceding statistical year:
- (b) *Step 2*—for each class of alcohol, multiply the result of step 1 by the appropriate rate, as set out in the table in **Schedule 4B**. This gives the (nominal) total number of litres of alcohol for each class of alcohol: 25
- (c) *Step 3*—for each class of alcohol, divide the number of litres of alcohol for that class by the total number of litres of alcohol for all classes. This gives the proportion of the aggregate levy figure that is to be borne by that class of alcohol in the next financial year: 30
- (d) *Step 4*—for each class of alcohol, multiply the result of step 3 by the aggregate levy figure. This gives the 35

Schedule 4A—*continued*

amount of levy to be borne by each class of alcohol in the next financial year:

- (e) *Step 5*—for each class of alcohol, divide the result of step 4 by the result of step 1. This gives the amount of levy payable on each litre of alcohol of that class in the next financial year. 5
- (3) If a rate for a class of alcohol is described in the table in **Schedule 4B** as a variable rate, the Minister must—
- (a) determine the rate to be applied to that class of alcohol; and 10
- (b) in making that determination, use the method for determining variable rates that is described in **Schedule 4B**.
- 4 Rate of levy fixed by Order in Council**
- (1) The Governor-General may, by Order in Council, fix for the next financial year, by reference to each class of alcohol, the amount of levy payable under **clause 5**. 15
- (2) The amount of levy for each class of alcohol must be as determined by the Minister in accordance with **clause 3(2)**.
- (3) If a rate for a class of alcohol is described in the table in **Schedule 4B** as a variable rate, the Order in Council must identify the rate determined by the Minister under **clause 3(3)** and used for the purpose of **clause 3(2)**. 20
- 5 Levies payable by importers and manufacturers of alcohol**
- (1) In every financial year, a levy of the amount set by Order in Council made under **clause 4** is payable by every person who— 25
- (a) enters for home consumption (as that expression is used in the Customs and Excise Act 1996) any imported alcohol that contains more than 1.15% volume of alcohol; or 30
- (b) manufactures in New Zealand any beer or spirits; or
- (c) sells any wine manufactured by that person in New Zealand.

Schedule 4A—*continued*

- (2) No levy is payable under this Act in respect of any alcohol that is not subject to or is exempt from Customs duty under the Customs and Excise Act 1996.
- (3) If any person may be allowed, under the Customs and Excise Act 1996, any drawback in respect of any alcohol, that person may also be allowed a refund of any levy paid by that person under this Act in respect of that alcohol. 5
- (4) In this section, **Customs duty** has the meaning given to the term duty by section 2(1) of the Customs and Excise Act 1996.
- 6 Payment and collection of levies in respect of beer, wine, and spirits** 10
- (1) All levies payable under this Act in respect of any beer, wine, or spirits are payable to the Customs in addition to any duty payable to the Customs in respect of the beer, wine, or spirits under the Customs and Excise Act 1996. 15
- (2) For the purposes of **subclause (1)**, the levies are payable to the Customs at the same time as the excise duty or excise-equivalent duty is payable under the Customs and Excise Act 1996 in respect of the beer, wine, or spirits concerned.
- 7 Powers of the Customs** 20
- The powers and authorities of the Customs under the Customs and Excise Act 1996, with any necessary modifications, apply in the same manner to the collection of a levy under this Act as they apply to the collection of duty under that Act.
- 8 All levies collected to be paid to HPA** 25
- (1) The Customs must pay to HPA all levies received under this Act by the Customs.
- (2) This clause is subject to **clause 9**.
- 9 Crown may be reimbursed for collection of levies** 30
- (1) For the purpose of reimbursing the Crown for any expenses incurred by the Customs in collecting any levies under this Act, the Customs may retain any percentage of every levy collected

Schedule 4A—*continued*

by it that may be determined by the Minister of Finance after consultation with HPA.

- (2) The amount of any levy retained under **subclause (1)** must not exceed 5% of the amount of the levies collected by the Customs. 5
- (3) The Crown is entitled in every financial year to recover from HPA out of the fund any sum in respect of the costs incurred by the Director-General of Health in administering this Act that may be determined by the Minister of Finance after consultation with HPA. 10
-

Schedule 2 **s 12(2)**
New Schedule 4B inserted
Schedule 4B **s 59AA**
Classes of alcohol and rates for each class

Class	Legal definition of class	Indicative description	Rate
	<i>Alcohol which, if imported, would be classified within the following tariff items</i>	<i>Percentage of alcohol by volume in most items in class</i>	
A	2203.00.12, 2206.00.37, 2208.70.30, 2208.90.62	More than 1.15% but not more than 2.5%	1.5%
B	2203.00.22, 2203.00.31, 2203.00.39, 2206.00.47, 2208.70.40, 2208.90.68	More than 2.5% but not more than 6%	Variable
C	2206.00.57, 2208.70.50, 2208.90.72	More than 6% but not more than 9%	8%
D	2204.10.01, 2204.10.18, 2204.21.18, 2204.29.18, 2205.10.19, 2205.10.38, 2205.90.19, 2205.90.38, 2206.00.08, 2206.00.68, 2208.70.60, 2208.90.78	More than 9% but not more than 14%	10%
E	2204.21.13, 2204.29.13, 2205.10.12, 2205.10.33, 2205.90.12, 2205.90.33, 2206.00.17, 2206.00.78, 2208.70.71, 2208.90.06, 2208.90.85	More than 14% but not more than 23%	Variable
F	2206.00.28, 2206.00.89, 2208.20.04, 2208.20.08, 2208.20.19, 2208.20.29, 2208.30.04, 2208.30.08, 2208.30.19, 2208.40.04, 2208.40.08, 2208.40.19, 2208.50.04, 2208.50.08, 2208.50.19, 2208.60.19, 2208.60.29, 2208.60.99, 2208.70.80, 2208.90.08, 2208.90.48, 2208.90.97	More than 23%	Variable

Schedule 4B—*continued*

Method for determining variable rates

For a given financial year, the variable rate for a class is the average alcohol content by volume of all the alcohol of that class that was imported into or manufactured in New Zealand in the preceding statistical year.

Schedule 3**s 26****Amendments to Acts relating to Alcohol
Advisory Council, Health Sponsorship
Council, or Health Promotion Agency****Crown Entities Act 2004 (2004 No 115)**

5

Item relating to the Health Sponsorship Council in Part 1 of Schedule 1: omit.

Part 1 of Schedule 1: insert in its appropriate alphabetical order “Health Promotion Agency”.

Item relating to the Alcohol Advisory Council of New Zealand in Part 2 of Schedule 1: omit. 10

Health Sector (Transfers) Act 1993 (1993 No 23)

Section 2(1): insert in its appropriate alphabetical order:

“**HPA** means the Health Promotion Agency established by **section 57** of the New Zealand Public Health and Disability Act 2000”. 15

Definition of **publicly-owned health and disability organisation** in section 2(1): insert “the HPA,” after “any DHB,”.

Official Information Act 1982 (1982 No 156)

Item relating to the Alcohol Advisory Council of New Zealand in Schedule 1: omit. 20

Ombudsmen Act 1975 (1975 No 9)

Item relating to the Alcohol Advisory Council of New Zealand in Part 2 of Schedule 1: omit.

Item relating to the Health Sponsorship Council in Part 2 of Schedule 1: omit. 25

Part 2 of Schedule 1: insert in its appropriate alphabetical order “Health Promotion Agency”.

Schedule 4**s 34****Amendments to Acts relating to Crown
Health Financing Agency****Crown Entities Act 2004 (2004 No 115)**

Item relating to the Crown Health Financing Agency in Part 1 of Schedule 1: omit. 5

Health Sector (Transfers) Act 1993 (1993 No 23)

Definition of CHFA in section 2(1): repeal.

Definition of **publicly-owned health and disability organisation** in section 2(1): omit “the CHFA,”. 10

Ombudsmen Act 1975 (1975 No 9)

Item relating to the Crown Health Financing Agency in Part 2 of Schedule 1: omit.

Schedule 5**s 40(1)****Amendment relating to Deputy Health
and Disability Commissioners**

15

Remuneration Authority Act 1977 (1977 No 110)

Schedule 4: insert in its appropriate alphabetical order:

“The Mental Health Commissioner and the Deputy Health and Disability Commissioners.”

Schedule 6**s 40(2)****Amendments consequential on expiry of
Mental Health Commission Act 1998**

20

Crown Entities Act 2004 (2004 No 115)

Item relating to the Mental Health Commission in Part 2 of Schedule 1: omit.

Official Information Act 1982 (1982 No 156)

25

Item relating to the Mental Health Commission in Schedule 1: omit.

Ombudsmen Act 1975 (1975 No 9)

Item relating to the Mental Health Commission in Part 2 of Schedule 1: omit.

	Schedule 7	s 46
	New Schedule added	
	Schedule	s 8
	Provisions relating to Board, chairperson, and members	
	Appointments in general	5
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—	10
(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.	15
2	Membership of Board and criteria for appointment	
(1)	The Board comprises 3 members (<i>see section 8(1)</i>).	
(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.	20
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.	25
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.	30
(2)	This clause does not apply to a defect in the qualifications for appointment of a member.	

Schedule—*continued***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.

Schedule—*continued*

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 5
- (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

10

- (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. 15

- (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). 20

- (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. 25

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. 30

Schedule—*continued*

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

5

- (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. 10
- (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. 15
- (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. 20
- (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

25

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 30

Schedule—*continued*

- (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. 5
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 10 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. 15

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. 20

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)— 25

- (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.

Schedule—*continued***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— 5
- (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. 10
- (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. 15

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)— 20
- (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. 25
- (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. 30
- (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

Schedule—*continued*

- (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 5
 - (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. 10
- (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. 15

22 Accountability for individual duties

- (1) A member is not liable for a breach of an individual duty under this Act. 20
- (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. 25

Immunities and insurance

23 Immunity from civil liability

- (1) A member is not liable, in respect of an excluded act or omission,— 30
 - (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—

Schedule—*continued*

- (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** 5
 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. 10
- 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. 15
 (2) The chief executive may recover the amount as a debt due in a court of competent jurisdiction.
- 26 Definitions for protections from liability** 20
 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 25
member includes a person who was a member at any time after the commencement of this Schedule but who is no longer a member.

Schedule—*continued*

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 5
 - (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. 10
-

Schedule 8 **s 54(1)**
**Consequential amendments to Charities
Act 2005**

Heading to section 14

Omit “**Commission**” and substitute “**Board**”. 5

Section 14

Omit “**Commission**” in each place where it appears and substitute in each case “**Board**”.

Section 15(e)

Omit “**Commission**” and substitute “**Board**”. 10

Section 16(4) to (8)

Repeal and substitute:

“(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. 15

“(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. 20

“(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. 25

“(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 17(1)

Omit “**Commission**” and substitute “**chief executive**”. 30

Heading to section 18

Omit “**Commission**” and substitute “**Chief executive**”.

Section 18

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Section 19

Repeal and substitute: 5

“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— 10

“(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. 15

“(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. 20

“(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.” 25

Heading to section 20

Omit “Commission” and substitute “Board”.

Section 20(1)

Omit “The Commission may, if it thinks fit,” and substitute “The Board may, if it thinks fit, direct the chief executive to”. 30

Section 20(2)(b)

Omit “Commission” and substitute “chief executive”.

Section 20(3)

Omit “Commission” in each place where it appears and substitute in each case “Board”.

Section 20(4)

Omit “Commission” and substitute “Board”. 5

Section 21

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Heading to section 23

Omit “**Commission**” and substitute “**Chief executive**”. 10

Section 23

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Section 24(1)(g)

Omit “Commission” and substitute “chief executive”. 15

Heading to section 25

Omit “**Commission**” and substitute “**Chief executive**”.

Section 25

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 20

Section 26

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Heading to section 30

Omit “**Commission**” and substitute “**Chief executive**”. 25

Section 30(1)

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Example in section 30(2)

Omit “Commission” and substitute “chief executive”. 5

Section 31(2)

Omit “Commission registers a notice” and substitute “Board directs that a notice be registered”.

Section 31(4)

Omit “Commission” and substitute “Board”. 10

Section 32(1)

Omit “Commission may remove an entity” and substitute “Board may direct that an entity be removed”.

Section 32(1)(f)

Omit “Commission” and substitute “chief executive”. 15

Section 33(1)

Omit “Commission” and substitute “chief executive”.

Section 33(2)(d)

Omit “Commission” and substitute “chief executive”.

Section 34

Omit “Commission” and substitute “chief executive”. 20

Heading to section 35

Omit “Commission” and substitute “Board and chief executive”.

Section 35(1)

Omit “Commission” in the first place where it appears and substitute “chief executive”. 25

Section 35(1)—*continued*

Omit “Commission” in the other places where it appears and substitute in each case “Board”.

Section 35(2)

Repeal and substitute:

- “(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.”

Heading to section 36

Omit “Commission” and substitute “Board”.

Section 36(1)

Omit “Commission” in each place where it appears and substitute in each case “Board”.

Section 36(2)

Omit “Commission” in each place where it appears and substitute in each case “Board”.

Heading to section 40

Omit “Commission” and substitute “chief executive”.

Section 40(1)

Omit “Commission” and substitute “chief executive”.

Section 40(2)(d)

Omit “Commission” and substitute “chief executive”.

Section 41(1)(c)

5

Omit “Commission” and substitute “chief executive”.

Section 41(5)

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Section 41(6)

10

Omit “Commission” and substitute “chief executive”.

Heading to section 43

Omit “**Commission**” and substitute “**Chief executive**”.

Section 43

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 15

Heading above section 44

Omit “*Commission*” and substitute “*Board or chief executive*”.

Heading to section 44

Omit “**Commission**” and substitute “**Board or chief executive**”. 20

Section 44

Omit “Commission” in each place where it appears and substitute in each case “Board or the chief executive”.

Section 45(3)

Omit “Commission” and substitute “Board or the chief executive”. 25

Heading to section 46

Omit “**Commission**” and substitute “**Board or chief executive**”.

Section 46

Omit “**Commission**” in each place where it appears and substitute in each case “**Board or the chief executive**”.

5

Heading to section 48

Omit “**Commission**” and substitute “**Board**”.

Section 48

Omit “**Commission**” in each place where it appears and substitute in each case “**Board**”.

10

Heading to section 49

Omit “**Commission**” and substitute “**Board**”.

Section 49

Omit “**Commission**” in each place where it appears and substitute in each case “**Board**”.

15

Section 50(1)

Omit “**Commission**” and substitute “**chief executive**”.

Section 50(2)

Omit “**Commission’s**”.

Section 51(1)

Omit “**Commission**” in each place where it appears and substitute in each case “**chief executive**”.

20

Section 51(2)

Omit “**Commission**” and substitute “**chief executive**”.

Heading to section 53

Omit “**Commission**” and substitute “**Chief executive**”.

25

Section 53(1)

Omit “Commission” in each place where it appears and substitute in each case “chief executive”.

Section 53(2)

Omit “Commission” and substitute “chief executive”. 5

Heading to section 54

Omit “**Commission**” and substitute “**Chief executive**”.

Section 54

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 10

Section 54(3)(e)

Omit “Commission’s” and substitute “chief executive’s”.

Heading to section 55

Omit “**Commission**” and substitute “**Board**”.

Section 55(1)

15

Repeal and substitute:

“(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.” 20

Section 55(2) and (3)

Omit “Commission” in each place where it appears and substitute in each case “Board”.

Omit “Commission’s” in each place where it appears and substitute in each case “Board’s”. 25

Section 56

Repeal and substitute:

“56 Notices

- “(1) Any notice given under this Act by the chief executive is sufficiently given if— 5
- “(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. 10
- “(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.” 15

Section 57(1)

Omit “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” and substitute “If this Act authorises the chief executive to serve a notice on, or give a notice to, any person, the notice”. 20

Omit “Commission” and substitute “chief executive”.

Section 57(3)(b)

Omit “Commission” and substitute “chief executive”. 25

Heading to section 58

Omit “**Commission**” and substitute “**Chief executive**”.

Section 58

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 30

Heading above section 59

Omit “*Commission*” and substitute “*Board*”.

Section 59

Omit “Commission” in each place where it appears and substitute in each case “Board”.

Section 60(3)

Omit “Commission” and substitute “chief executive”. 5

Section 60(6)

Omit “Commission” and substitute “chief executive”.

Section 60(7)

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 10

Section 61(1)

Omit “Commission” in each place where it appears and substitute in each case “Board or the chief executive”.

Subpart 1 of Part 3 (sections 62 and 63):

Repeal. 15

Section 73

Omit “Commission” in each place where it appears and substitute in each case “Board or the chief executive”.

Section 74

Omit “Commission” in each place where it appears and substitute in each case “chief executive”. 20

Heading to section 75

Omit “Commission” and substitute “Board or chief executive”.

Section 75

Omit “Commission” and substitute “Board or the chief executive”. 25

Schedule 9	s 54(2), (3)
Amendments to other enactments relating to Charities Commission	
Part 1	
Amendments to Acts	5
Crown Entities Act 2004 (2004 No 115)	
Item relating to the Charities Commission in Part 2 of Schedule 1: omit.	
Major Events Management Act 2007 (2007 No 35)	
Paragraph (a) of the definition of registering authority in section 4: omit “Charities Commission” and substitute “chief executive”.	10
Ombudsmen Act 1975 (1975 No 9)	
Part 2 of Schedule 1: insert in its appropriate alphabetical order “Board established by section 8 of the Charities Act 2005.”	
Item relating to the Charities Commission in Part 2 of Schedule 1: omit.	15
Tax Administration Act 1994 (1994 No 166)	
Definition of Charities Commission in section 3(1): repeal.	
Section 81(4)(fb): repeal and substitute:	20
“(fb) communicating to any person, being a member, an employee, or an agent of the Board established by section 8 of the Charities Act 2005 or the chief executive defined in section 4(1) of that Act, any information, being information—	
“(i) that the person is authorised by that Board or chief executive to receive; and	25
“(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	30
of the powers of that Board or chief executive or the performance of their functions and duties under that Act.”.	

Part 2

Amendments to Charities (Fees, Forms, and
Other Matters) Regulations 2006

Regulation 4(2)

Omit “Charities Commission” and substitute “chief executive”. 5

Regulation 9

Omit “Charities Commission” in each place where it appears and substitute in each case “chief executive”.