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## CHARITIES AMENDMENT BILL: SECOND READING

### LEGISLATIVE STATEMENT

*Presented to the House in accordance with Standing Order 272 J.17*

#### Overview

The Charities Amendment Bill (the Bill) amends the Charities Act 2005 (the Charities Act).

The Charities Act provides a registration, reporting and monitoring system for entities that carry out charitable purposes and therefore have a clear public benefit. This helps approximately 28,000 registered charities to retain the public's trust and confidence that charitable funds are being managed appropriately. While registering under the Charities Act is voluntary, it brings several benefits, including eligibility for tax exemptions.

The objective of the Bill is to make practical changes to support charities to thrive while ensuring sufficient public transparency.

The Bill does not amend the key features of the Charities Act, which will remain intact. This includes the definition of 'charitable purpose' which is the basis for eligibility for registration; recognition of the different entities that make up the charitable sector (such as charitable trusts, incorporated societies, and companies); a reporting regime and public register; and regulatory functions split between the independent Charities Registration Board and the Chief Executive of the Department of Internal Affairs.

#### Reporting requirements for very small charities

The Charities Act requires charities to report annually on their finances. The reports are publicly available on the charities register. Financial statements must be prepared in accordance with not-for-profit reporting standards set by the External Reporting Board.

There are four tiers of standards – charities with higher annual expenditure are subject to more rigorous reporting while smaller charities can provide simplified reports. Over half of registered charities are small and report to the tier four standard (under \$140k annual operating payments). Compliance with this standard has been falling since the standards were introduced in 2015.

The Bill contains a new power for the Chief Executive of the Department to exempt charities from the reporting standards. Exempted charities would instead submit their usual annual return with basic information about the charity's activities and funding. This aims to balance the benefit of transparent reporting with the current compliance burden.

The exemption power could only be used to exempt charities that are defined by regulations, to maintain public trust and confidence that reduced reporting is only provided to charities that need it. Regulations would be made on recommendation from the Minister of the Community and Voluntary Sector, who must consider the purposes of the Act. The Chief Executive must also consider the purposes of the Act before using the exemption power.

### **Appeals framework**

If charities wish to appeal a decision of the Charities Registration Board, they must appeal to the High Court. This can be inaccessible to many charities, given the costs, complexities and time associated with taking appeals to the courts.

The Bill expands the jurisdiction of the Taxation Review Authority to hear first appeals under the Charities Act. When hearing charities appeals, the Authority would be known as the Charities Review Authority (the Authority). The High Court would remain an appeal court for the Authority's decisions, and the Authority may also refer cases to the High Court. The powers and procedures of the Charities Review Authority have been adapted from the Taxation Review Authorities Act 1994 and the Taxation Review Authorities Regulations 1998.

The Bill also expands the decisions that can be appealed, to include the Charities Registration Board registration decisions as well as most decisions of the Chief Executive, such as decisions about withholding information from the Charities Register.

Charities would also have two months to lodge an appeal with the Authority instead of 20 working days.

### **Regulatory decision-making**

The Bill establishes new requirements for the Charities Registration Board and the Chief Executive, to promote best-practice regulatory decision-making. This includes:

- expanding the type of decisions that can be objected to before a final decision is made, with the opportunity for charities to be heard by the decision-maker in person;
- providing charities two months to object to decisions and submit information to the Chief Executive on administrative matters, instead of 20 working days;
- requiring the Charities Registration Board to publish decisions about declining an entity's application for registration, deregistering a charity, and disqualifying an officer to improve transparency on decision-making;
- requiring the Chief Executive to consult with the sector on guidance material; and
- increasing the Charities Registration Board from three members to five members.

### **Governance of charities**

While the Charities Act primarily focuses on the entity, officers have the important role of running the charity and are subject to some regulation.

The Bill amends the definition of ‘officer’ to clarify that persons who are able to exercise significant influence over substantial decisions of the entity are captured as officers and are therefore accountable for the running of the charity. This definition includes a person who has powers conferred on them. The Bill also clarifies that the role of an officer is to assist the charity in furthering its charitable purposes and comply with statutory obligations.

The Bill disqualifies persons from being officers if they have been convicted of financing terrorism and requires at least one officer of the charity to be 18 years old (the remaining officers can be 16 or 17 years old). These changes aim to mitigate risks to charitable funds, create consistency with other relevant legislation, and align with international best practice.

The Bill also requires charities to review their governance procedures at least every three years. When reviewing governance procedures, charities will need to consider whether they are up to date, support the charity to achieve its charitable purpose and comply with the Charities Act.

### **Regulatory compliance and enforcement tools**

The Charities Act provides the regulator with a range of tools to support and enforce compliance with the Act. This includes education and guidance, which are generally the first and most widely used tools. Other tools are also available to address issues such as no longer qualifying for registration, breaching the Charities Act, or committing ‘serious wrongdoing’.

The Bill makes several changes to compliance and enforcement tools so that they are fit for purpose. The Bill makes explicit the currently implicit obligations for charities to remain qualified for registration (which are that charities must maintain charitable purposes, have qualified persons as officers, and maintain a rules document). Making the obligations more explicit aims to improve ease of compliance with the Charities Act.

The Bill amends part of the definition of ‘serious wrongdoing’ to set a consistent level of ‘seriousness’. Instead of capturing any type of offence (including low-level infringement offences), ‘serious wrongdoing’ will now include an act, omission, or course of conduct punishable by two or more years of imprisonment, or imprisonment for life.

The Bill also allows the Charities Registration Board to disqualify an officer for a period of up to five years if the person commits ‘serious wrongdoing’ or significantly or persistently breaches their obligations. At present, the Board can only disqualify an officer if the charity is deregistered, which can be disruptive if the problem behaviour sits with an officer instead of the entity.

### **Minor and technical changes**

The Bill includes some minor and technical changes to ensure the Charities Act is fit for purpose. For example, the Bill will allow notices from the regulator to be served electronically and ensures the Chief Executive can amend the register in the case of genuine mistakes.

## **Commencement**

Certain aspects of the Bill will require a delayed commencement date of 12 months after the date of Royal Assent, including;

- Taxation Review Authority procedures – this delay will provide the Ministry of Justice with time to prepare the Authority and its systems to hear charities appeals as well as make the associated regulations;
- Provisions on the objections and decision-making framework – the appeals and objections provisions will need to be implemented at the same time to ensure the decision-making framework is tenable.

The regulation-making powers in the Bill that relate to the appeals provisions, enable reduced reporting, and increase the number of members on the Charities Registration Board will come in to force immediately after the date of Royal Assent.

The rest of the Bill will come in to force 3 months after the date of Royal Assent.