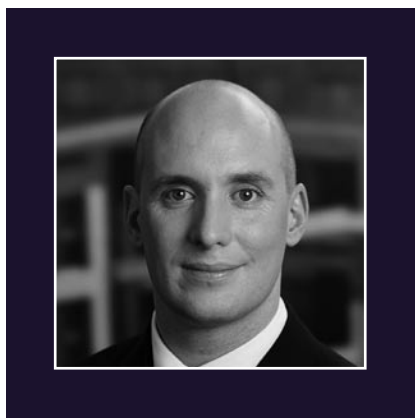


Charities Bill reported back

“The Charities Bill has now been passed into law, and a number of the concerns with the original drafting have been addressed.”



Paul Kilford - Solicitor

In June 2004, we commented on proposed new legislation affecting the charity sector and the criticism that had greeted the publication of the new Charities Bill 2004. Our concerns included:

- the status of the proposed Charities Commission (the Charities Commission) as a Crown agent;
- the definition of “charitable purpose”;
- the high compliance costs;
- the onerous clause relating to the disqualification of officers;
- the inability of charities to indemnify officers against penalties.

The Bill has now been passed into law, and a number of the concerns with the original drafting have been addressed.

Charitable status and approved donee status

One important change is that the Charities Commission will only administer the charitable status of an organisation.

In what some may regard as a backward step, the “approved donee” regime (entitling donors to claim tax rebates) will continue to be administered by Inland Revenue.

Given that almost every entity that applies for charitable status also applies for approved donee status, this will require every application to be considered by both the Charities Commission and Inland Revenue.

However, the Act allows the Charities Commission to share information with Inland Revenue, so that an entity applying for charitable status will be assessed by Inland Revenue for approved donee status without having to complete any further application forms or take any further action.

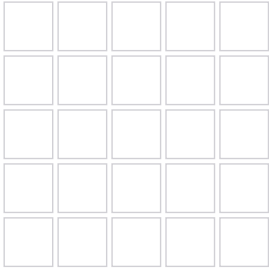
The rationale for splitting these functions is that it is not considered appropriate to have the Charities Commission responsible for decisions that may adversely affect the revenue base.

This logic seems difficult to understand. The Charities Commission will be responsible for approving entities’ charitable status which will in turn likely result in the entity being tax exempt.

This decision potentially has a significant impact on the revenue base (especially when one considers that charities are not prevented from owning and operating large profit-making operations).

IRD approval will necessitate registration with Commission

The Act confirms that charities with existing approval from Inland Revenue will be required to register with the Charities Commission.



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Willy Sussman - Partner

In other words, all charitable entities, whether established before or after the Act takes effect, must register with the Charities Commission in order to be tax exempt.

Definition of “charitable purpose”

The Act does not define “charitable purpose” in any meaningful way and, instead, adopts the common law definition of that phrase, as modified by changes to the Income Tax Act 2004.

However, the Social Services Select Committee, which considered the Bill, recommended that a review of the definition be conducted at a later date.

The Act does enact common law concepts relating to “secondary purposes”. These allow organisations to have non charitable “secondary” purposes (in particular, advocacy), provided that the secondary purpose simply aids the advancement of the primary charitable purpose.

Registration

The Act recognises that the requirement, as initially drafted in the Bill, for every entity within a charitable structure to register under the Commission was too onerous.

Therefore, the Act allows entities to be “grouped”, with a central entity registering as the umbrella organisation for all entities under the umbrella.

This structure will then generally be treated as a single entity for all purposes of the Act (including being able to file consolidated annual returns).

Officers of charitable entities

The original draft of the Bill disqualified any person from becoming an officer of a charitable entity if they had been convicted of an offence punishable by a term of imprisonment of two years or more.

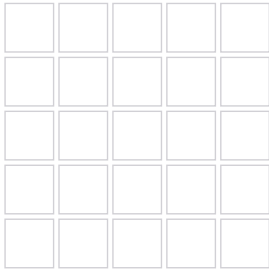
However, the Act has relaxed this provision so that a person will only be disqualified from being an officer if they have been convicted of a dishonesty offence, such as theft or fraud, in the last seven years.

Indemnification

Another change from the initial draft is that charities will be able to indemnify or provide insurance for their officers against financial penalties imposed by the Act.

Registration number

The Commission will now encourage (rather than require) entities that describe



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themselves as “a registered charity” to provide their registration details. There are penalties for those who falsely claim to be registered.

Returns

An entity is allowed six months after its balance date to file its annual return.

A charitable entity can decide its own balance date and can also alter that date, provided that there are not more than 15 months between balance dates and there is a balance date in each calendar year.

Although not part of the Act, the Minister has said that registration fees will be \$50 for online filing and \$75 for paper-based filing, with entities that have an annual income of less than \$10,000 being exempt from charges.

Appeals against Commission decisions

The High Court has been given jurisdiction to consider appeals against the Commission’s decisions, rather than

the District Court as contemplated in the original draft of the Bill.

Application dates

The Commission is to be established on 1 July 2005, with most other provisions of the Act due to take effect on a staggered basis. The Commission will be overseen by the Department of Internal Affairs, rather than the Ministry of Economic Development as was first mooted

Press releases from the Minister suggest that registration with the Commission will not be required until 2006 at the earliest. This gives the Commission time to establish its procedures before the registration process truly begins. The Minister has also stated that the initial registration process will be free of charge.

Advice and information

For further advice or information, please contact any member of the tax team listed below.

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