

## Charities and charitable status

### Why register as a charity?

#### **Income Tax Act 2007, s CW41(2)**

You're not required to register your group on the Charities Register, but there are several benefits if you do. Most importantly, registering is a precondition for obtaining "charitable status" from Charities Services (Department of Internal Affairs), and therefore for being exempt from paying tax on income.

Usually Inland Revenue will presume that if your group is a registered charity and has only non-business income, it qualifies for tax-exempt status.

Your group will need to register with Charities Services even if it's already registered and incorporated as an incorporated society or a charitable trust or trust board.

### **Registering as a charity also has other benefits:**

- Information on the Register – Supporters and funders can find detailed information about the organisation on the Charities Register (this is particularly useful for charities applying for public funding)
- Proof of registered status – The registration number can be displayed on promotional and identification material to provide proof of your registered charitable status to potential donors and funders.
- Greater public confidence – Registered charities are likely to enjoy greater public trust and confidence, because information about their activities and how they use their resources are available to the public on the Charities Register.

## Can we still raise money as a charity if we're not registered?

**Charities Act 2005, ss 37, 38**

Yes. An unregistered charitable organisation can still call itself a "charity" and ask the public for donations.

However, if you choose not to register you can't call yourself a "registered charitable entity", and you also won't qualify for tax-exempt status.

It's a criminal offence, carrying a fine of up to \$30,000, for a person to falsely claim or imply that they are a registered charitable entity or that they act on behalf of one.

## Who administers and monitors the charitable sector?

**There are several public bodies involved in regulating and monitoring charities in New Zealand:**

- The Department of Internal Affairs, through its "Charities Services" section, administers the Charities Register, monitors and investigates charities, and is also responsible for education in this area. Those functions used to be carried out by the Charities Commission; the Commission was disestablished in July 2012 and its registration, education, and monitoring and investigation teams became part of Internal Affairs and now operate [Charities Services](#).
- The Charities Registration Board is an independent body that decides whether specific charities should be registered or deregistered.
- Inland Revenue decides whether a registered charity qualifies for tax-exempt status.

## Benefits of registering as a charity

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## **Who can register as a charity?**

## Requirements for registering as a charity

**Charities Act 2005, s 13**

### To be able to register as a charity:

- your organisation must have “charitable purposes”, and
- all of its officers must be qualified under the Charities Act.

These requirements are explained below: see “Charitable purposes” and “Qualified officers”.

### Can an unincorporated group register as a charity?

Yes. Charities Services will accept applications from unincorporated groups and from the trustees of a trust, as well as from incorporated societies and other incorporated bodies.

### What is a “charitable purpose”?

**Charities Act 2005, s 5**

#### A charitable purpose can include:

- the relief of poverty
- the advancement of education
- the advancement of religion, or
- anything else that benefits the community.

#### A charitable purpose must also provide a public benefit, which means a benefit that is:

- recognised by law as beneficial, and
- available to the public or a sufficient section of the public – for example, people living in a particular geographical area, or with particular charitable needs.

A purpose can't be charitable if it's aimed at creating private financial profit.

A marae committee has a charitable purpose if the physical structure of the marae is on Māori reservation land, and the marae's funds are used only for administering the land and physical

structure and/or for a “charitable purpose” according to the general definition above.

Sport and recreation organisations can qualify for registration as charities if promoting sport is the means by which the organisation pursues a charitable purpose. For example, a sports organisation providing training or skills-development for the public may qualify as a charity under the “advancement of education” purpose, or an organisation providing public sport or recreation facilities may be considered to be benefitting the community. (For more information, visit: [www.charities.govt.nz/apply-for-registration/charitable-purpose](http://www.charities.govt.nz/apply-for-registration/charitable-purpose).)

### **Can a charitable organisation also have non-charitable purposes?**

#### **Charities Act 2005, s 5(3)**

The organisation’s main purposes must be exclusively charitable, but it may also have non-charitable purposes if these are “ancillary” to the main purposes.

A non-charitable purpose will be “ancillary” if it’s an inevitable consequence of the charity’s main work, or if it supports the main charitable purpose. A non-charitable purpose won’t be ancillary if it’s a significant or independent part of the organisation’s work.

### **Qualified officers**

All officers must be qualified under Charities Act

#### **Charities Act 2005, s 16; Crimes Act 1961, s 2(1); Tax Administration Act 1994, s 143B**

For an organisation to be able to register as a charity, its officers must not be disqualified under the Charities Act (see also below, “Who are a charity’s ‘officers?’”).

### **An officer is disqualified if, for example:**

- they’re an undischarged bankrupt, or
- within the last seven years they’ve been convicted of a dishonesty offence under the Crimes Act or of tax evasion under the Tax Administration Act, or
- they’re subject to a property order under the Protection of Personal and Property Rights Act 1988 – that is, the Family Court has decided they are unable to manage their own property.

However, if an officer is disqualified by one of these factors or any of the others set out in the

Act, the Charities Registration Board has the power to ignore the factor in the particular case.

### **Who are a charity's "officers"?**

**Charities Act 2005, s 4**

If a charitable organisation is a trust, its officers are all the trustees of the trust.

#### **With other organisations, the officers will be:**

- all the members of the highest governing body (usually the people elected at an AGM), and
- every person who has a "position of significant influence" over the running or management of the organisation, which includes decision-making, expenditure and day-to-day administration.

## **The registration process**

### **Who do we apply to?**

Organisations wanting to register as a charity must apply to the Charities Services section of the Department of Internal Affairs. However, the decision whether to allow your organisation to register is then made by the Charities Registration Board, an independent body.

### **What information do we have to provide?**

**Charities Act 2005, s 17**

- an application form from the Charities website
- a copy of your rules or governing document (for example, a trust deed), with all amendments
- a Companies Office registration number, if already incorporated
- an IRD number if applicable
- information about your organisation's work and activities
- information about the relevant geographical area and the people likely to benefit from your activities

- financial information, including your funding sources and balance to date, and
- a completed Officer Certification form for each of the organisation's officers.

Visit the [Charities Services website](#) to download the necessary forms.

## Effect of registration

### Under what name will the organisation be registered?

#### **Charities Act 2005, s 15**

If your organisation is already registered as an incorporated society, a company or a charitable trust board, the name under which it was registered will also be used for the Charities Register.

If your organisation isn't incorporated, the name to be recorded on the Charities Register should be the name used on formal documents. The Charities Registration Board can refuse to register the organisation under a name that is offensive or likely to mislead the public.

If your organisation has more than one name (for example, if it's known more commonly by a name other than its legal name), it may be possible for both names to be entered on the Charities Register.

## Information on the Charities Register

#### **Charities Act 2005, s 24**

#### **The Register holds the following information about each registered charity:**

- its name, address and unique registration number
- names of current officers (and all other officers since the organisation was first registered)
- a copy of its rules
- a copy of the application for registration
- annual returns (including financial statements), and
- any notices about changes to the charity's name, purpose, rules and so on.

This information is required to be publicly available, so that members of the public can search

the register online. In limited situations, Charities Services can restrict public access to information or documents on the Register if it believes this is in the public interest (for example, to protect the health and safety of members of the public).

Note: Even if this information is restricted on the Charities Register, it will still be available through the Official Information Act.

## **Administrative responsibilities of registered charities**

### **What are the group's responsibilities after it's registered?**

#### **Charities Act 2005, ss 39-42F**

All registered charities are required to file an annual return and financial statements with the Charities Services section of the Department of Internal Affairs.

#### **Organisations must also notify Charities Services if there are changes to their:**

- name
- address for the service of documents
- officers (including if an officer becomes disqualified under the Charities Act)
- rules and purposes
- balance date for annual returns
- charitable purposes.

When a charity is collecting by phone or the Internet, their collectors have to provide the organisation's Charities Register registration number if they're asked for it. Visit the [Charities website](#) to access the relevant forms.

Note: From 1 April 2015, financial statements have had to be presented according to new standards set by the External Reporting Board (XRB). The particular standard each charity must use depends on their annual operating expenditure. In general, charities with an annual operating expenditure of less than \$125,000 will be able to prepare less complex financial statements. (For more information, visit [the Charities website](#).) From April 2015, larger charities are also required to have their financial statements audited or reviewed by qualified auditors – this applies to a charity if its annual operating expenditure in each of its last two financial years



was more than \$500,000.

## **Removal from the Charities Register**

### **Can a charitable organisation be removed from the Charities Register?**

**Charities Act 2005, ss 31, 32**

#### **The Charities Registration Board can remove or deregister a charity:**

- if it no longer qualifies for charitable status because its purposes and activities are no longer charitable within the terms of the Charities Act
- if there is a significant or persistent failure by the organisation or one of its officers (or collectors) to meet its obligations under the Act (for example, if the organisation fails to file annual returns), or
- if the organisation engages in “serious wrongdoing”.

Charitable organisations can also ask to be removed from the Charities Register.

#### **Tax rules for de-registered charities**

**Income Tax Act 2007, ss CW41, HR12**

De-registered charities who have complied with their own constitution and rules are only subject to tax on their income from the date of the final decision to deregister. A deregistered charity that hasn't complied with its own constitution and rules will be subject to income tax from the date of non-compliance.

A separate tax on net assets applies to deregistered charities who have not distributed any accumulated income and assets for a charitable purpose within 12 months of becoming subject to income tax.

### **Obtaining tax-exempt status from Inland Revenue: Donee status**

**Income Tax Act 2007, s CW41**

It's not necessary to apply to Inland Revenue to obtain tax exempt status. The Charities Services

section of the Department of Internal Affairs automatically notifies Inland Revenue when a group has registered with them and when a group has de-registered. A charity only needs to contact Inland Revenue for other tax matters such as GST or PAYE.

A group can also apply directly with Inland Revenue for donee status without registering with Charities Services (visit [www.ird.govt.nz](http://www.ird.govt.nz)). To be eligible for donee status, an organisation's purpose must either be charitable, benevolent, philanthropic or cultural. The funds of the organisation must apply mainly in New Zealand and Inland Revenue will consider who will benefit from the funds.

Donee status is wider than charitable purpose. However, Inland Revenue will consider whether the organisation has charitable status, or if they have applied to and been turned down by Charities Services. IRD and Charities Services work closely together.