

# **DRAFT FOR CONSULTATION**

## **Te Ture Tautoko i te Aroha - Charities Bill**

Government Bill

### **Explanatory note**

[TO INSERT]

[Legend:

2019 No 38 – Trusts Act 2019

2014 No 56 – Veterans' Support Act 2014

2006 No 69 – Evidence Act 2006

2005 No 39 – Charities Act 2005

2004 No 115 – Crown Entities Act 2004

2001 No 10 – Public Audit Act 2001

1994 No 166 – Tax Administration Act 1994

1994 No 165 – Taxation Review Authorities Act 1994

1993 No 105 – Companies Act 1993

1993 No 87 – Electoral Act 1993

1993 No 82 – Human Rights Act 1993

1993 No 28 – Privacy Act 1993

1989 No 80 – Education Act 1989

1986 No 127 – Environment Act 1986

1982 No 118 – Friendly Societies and Credit Unions Act 1982

1957 No 18 – Charitable Trusts Act 1957

1908 No 212 – Incorporated Societies Act 1908

1908 No 81 – Industrial and Provident Societies Act 1908

SR 2006/301 – the Charities (Fees and Other Matters) Regulations 2006

# Te Ture Tautoko i te Aroha - Charities Bill

## Government Bill

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**The Parliament of Aotearoa New Zealand enacts as follows:**

**1 Title**

This Act is Te Ture Tautoko i te Aroha - Charities Act **[2022]**.

**2 Commencement**

- (1) Sections **[TO INSERT]** come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date or dates to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.
- (3) Any provision of this Act that is not earlier brought into force under this section comes into force on **[INSERT DATE]**.

**PART 1 – PRELIMINARY PROVISIONS**

**3 Purposes**

The purposes of this Act are to –

- (a) value and support a culturally diverse, ~~robust~~strong, thriving, independent, innovative, and sustainable charities sector, and maximise the ability of charities to provide benefit for society;



- (b) provide a forum for transparency and accountability, by providing for a charities register on which registered charitable entities are required to disclose certain information;
- (c) establish Te Kairēhita Aroha – the Charities Registrar, an organisation to inform public choice by administering the charities register;
- (d) establish Te Māngai Aroha to support charities, including by advocating for and raising public awareness of the importance and value of the for-purpose sector, including the charitable sector; and
- (e) establish the Māori Advisory Committee, as a committee of Te Māngai Aroha, tasked with ensuring New Zealand charities law develops in accordance with tikanga.

Compare: Australian Charities and Not-for-profit Commission Act 2012 s 15-5(1)(b); Exposure Draft Incorporated Societies Bill, clause 3(d)(ii)

## **4 Principles**

Every person or court performing a function or duty or exercising a power under this Act must have regard to the following principles:

- (a) charities have a duty to act in the best interests of their stated charitable purposes;
- (b) charities are independent, self-governing organisations that should be free to determine how best to further their stated charitable purposes without undue government interference;
- (c) the autonomy of charities, and their rights to freedom of association and expression, in particular their right and duty to advocate in furtherance of their charitable purposes, must be respected, and must not be subject to undue limitation;
- (d) the charities law of Aotearoa New Zealand must recognise and respect the principles of Te Tiriti o Waitangi;
- (e) this Act is intended to be complemented by tikanga principles and by the rules of the common law and equity relating to charities (except where otherwise indicated or where those rules are inconsistent with the provisions of this Act);
- (f) the privileges of registered charitable status should not be available to charities that do not act in furtherance of their stated charitable purposes, or that otherwise engage in serious wrongdoing.

Compare: 2019 No 38 s 4 and s 5(8)(b)

## **4A Treaty of Waitangi**

In achieving the purposes of this Act, all persons performing functions or exercising powers under it must take into account the principles of Te Tiriti o Waitangi.

Compare: 2020 No 42 s 4

## **5 Civil society strategy**

- (1) The Minister must, from time to time, issue a civil society strategy that sets out, with respect to the for-purpose sector, and in particular the charitable sector, –

- (a) the Government's long term strategic vision for how it might empower and enable the sector; and
  - (b) the Government's current and medium-term priorities for doing so.
- (2) Before issuing a civil society strategy, the Minister must consult with –
- (a) Te Māngai Aroha – the Advisory Board and the Māori Advisory Committee;
  - (b) Te Kairēhita Aroha - the Charities Registrar; and
  - (c) other stakeholders in the sector.
- (3) As soon as practicable after issuing a civil society strategy, the Minister must give public notice of it.

Compare: 1989 No 80 s 159AA

## 6 Overview

- (1) This section is a guide only to the general scheme and effect of this Act.
- (2) In this Act, –
- (a) **this Part** provides for preliminary matters, including the purposes and principles of this Act and interpretation:
  - (b) **Part 2** provides for the meaning of charitable purpose:
  - (c) **Part 3** establishes Te Kairēhita Aroha – the Charities Registrar, an organisation responsible for informing public choice, principally by maintaining the charities register in accordance with this Act:
  - (d) **Part 4** establishes Te Māngai Aroha - the Advisory Board, an independent body to advocate for and advance the interests of the for-purpose sector, including by advising government on the civil society strategy and charities law and policy. Part 4 also provides for Te Māngai Aroha to form the Māori Advisory Committee to assist Te Kairēhita Aroha and other decision-makers under this Act in giving effect to the principles of Te Tiriti o Waitangi and tikanga Māori:
  - (e) **Part 5** provides for the registration of charities under this Act, including eligibility for registration and the process for applying for registration, and the duties of registered charitable entities:
  - (f) **Part 6** continues the register of charities:
  - (g) **Part 7** provides for binding rulings, to provide registered charitable entities with certainty about whether they are able to undertake certain activities:
  - (h) **Part 8** provides for monitoring:
  - (i) **Part 9** provides for removal from the register:
  - (j) **Part 10** establishes the Charities Review Authority, a specialist Tribunal to hear appeals against decisions of Te Kairēhita Aroha under this Act:
  - (k) **Part 11** provides for enforcement:
  - (l) **Part 12** provides for miscellaneous matters, including notices, regulations, amendments to Inland Revenue Acts, and miscellaneous provisions.

## 7 Interpretation of Act

- (1) This Act –
  - (a) must be interpreted in a way that promotes its purposes and principles; and
  - (b) is not subject to any rule that statutes in derogation of the common law should be strictly construed; but
  - (c) may be interpreted having regard to the common law and equity, but only to the extent that the common law and equity are consistent with –
    - (i) its provisions; and
    - (ii) the promotion of its purpose and principles.
- (2) Subsection (1) does not affect the application of the Interpretation Act 1999 to this Act.

Compare: 2019 No 38 s 7; 2006 No 69 s 10

## 8 Inherent and implied powers not affected

- (1) The inherent and implied powers of a court are not affected by this Act, except to the extent that this Act provides otherwise.
- (2) Despite subsection (1), a court must have regard to the purposes and principles of this Act when exercising its inherent or implied powers.

Compare: 2019 No 38 s 8; 2006 No 69 s 11

## 9 Interpretation

- (1) In this Act, unless the context otherwise requires, –

**accounting period** has the same meaning as in section 5(1) of the Financial Reporting Act 2013

**applicable auditing and assurance standards** has the same meaning as in section 5 of the Financial Reporting Act 2013

**applicable financial reporting standard** has the same meaning as in section 5 of the Financial Reporting Act 2013

**balance date** means the balance date of a registered charitable entity under section 59 (*Balance date*)

**charitable purpose** has the meaning given in Part 2 (*Meaning of charitable purpose*)

**Charities Review Authority** or **Authority** means a Charities Review Authority established or continued in existence under Part 10 (*Charities Review Authorities*)

**civil society strategy** has the meaning given by section 5 (*Civil society strategy*)

**collector** means a person who, on behalf of a registered charitable entity, requests funds, canvasses for subscriptions, sells raffle or lottery tickets, or appeals for donations

**contact officer** means the person holding office as the contact officer of the registered charitable entity in accordance with its rules (see sections 51 and 52 (*Contact officer*))

**document** has the meaning set out in section 2(1) of the Commerce Act 1986

**entity** means any society, institution, or trustees of a trust

**financial reporting standard** has the meaning set out in section 5 of the Financial Reporting Act 2013

**financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013

**generally accepted accounting practice** has the meaning set out in section 8 of the Financial Reporting Act 2013

**hearing authority** means –

- (a) a Charities Review Authority; or
- (b) the High Court

**Inland Revenue Acts** has the meaning set out in section 3(1) of the Tax Administration Act 1994

**Te Kairēhita Aroha** means the registrar of the register of charities, established under Part 3 (*Te Kairēhita Aroha – the Charities Registrar*)

**Te Māngai Aroha - Advisory Board** means the advisory board established under Part 4 (*Te Māngai Aroha – Advisory Board*)

**Te Tiriti o Waitangi** means the Treaty of Waitangi

**Māori Advisory Committee** means the committee of Te Māngai Aroha established under section 45 (*Establishment of Māori Advisory Committee*)

**Minister** means the Minister of the Crown who, under the authority or any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**non-GAAP standard** has the same meaning as in section 5 of the Financial Reporting Act 2013

**parent entity** has the meaning set out in section 79 (*Te Kairēhita Aroha may recognise a group for purposes of registration*)

**post-settlement governance entity** means an entity established by an iwi and approved by the Crown for the purpose of receiving redress in the settlement of the historical Treaty of Waitangi claims of that iwi

**qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013

**register** or **register of charities** means the register of entities registered under this Act, continued under section 69 (*Register of charities*)

**registered charitable entity** means a society, an institution, or the trustees of a trust that is or are registered under this Act

**regulations** means regulations made under this Act

**reporting period** means, in respect of an entity, a year or other accounting period ending on the balance date of the entity

**responsible person** –

- (a) means, in the case of a registered charitable entity that is the trustees of a trust:
  - (i) any of those trustees; and
  - (ii) if the trustee is a body corporate, any director of the trustee; and
- (b) means, in relation to any other entity, a member of the board or governing body of the entity if it has a board or governing body; and
- (c) includes, with respect to any registered charitable entity, a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive); and
- (d) includes any class or classes of persons that are declared by regulations to be officers for the purposes of this Act; but
- (e) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

**rules** means, -

- (a) in relation to the trustees of a trust, the rules, trust deeds, and instruments constituting, or defining the constitution of, that trust; and
- (b) in relation to any other entity, the rules, constitution, documents or instruments constituting, or defining the constitution or rules of, that entity

**serious wrongdoing**, in relation to a registered charitable entity, includes any serious wrongdoing of any of the following types:

- (a) a significant or persistent failure by the registered charitable entity to act in accordance with its rules or in the best interests of its stated charitable purposes;
- (b) a significant or persistent failure by the registered charitable entity to act in accordance with the requirements of this Act;
- (c) a registered charitable entity, the funds or resources of which are used in:
  - (i) a fraudulent or corrupt manner;
  - (ii) a manner that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity;
  - (iii) a manner that is oppressive, improperly discriminatory, grossly negligent, or that constitutes gross mismanagement;
- (d) a registered charitable entity engaging in an act, omission, or course of conduct that constitutes an offence;

**single entity** has the meaning set out in section 79 (*Te Kairēhita Aroha may recognise a group for purposes of registration*)

**specified not-for-profit entity** has the meaning set out in section 46 of the Financial Reporting Act 2013;

**tikanga principles** include but are not limited to the principles of kaitiakitanga, manaakitanga, aroha, mana, rangatiratanga, whanaungatanga, kotahitanga, atawhai and mahi tahi.

- (2) In this Act, unless the context otherwise requires, references to a person performing functions and exercising powers, or carrying out responsibilities, include carrying out duties.
- (3) An example used in this Act has the following status:
  - (a) the example is only illustrative of the provision to which it relates and does not limit the provision; and
  - (b) if the example and the provision to which it relates are inconsistent, the provision prevails.
- (4) A requirement under this Act to provide the contact details of a contact officer is a requirement to provide at least the person's telephone number and email address.

Compare: 2005 No 39 s4(2) and (3); Exposure Draft Incorporated Societies Bill, clause 5(2)

## **10 Act binds the Crown**

This Act binds the Crown.

## **PART 2 – MEANING OF CHARITABLE PURPOSE**

### **11 Identifying an entity's purpose**

Identifying an entity's purpose is a question of interpretation of the entity's rules.

### **12 Test for whether a purpose is charitable**

Once identified, a purpose of an entity must meet the following test in order to be considered charitable:

- (a) the purpose must benefit the public (the *public benefit requirement*) in the sense that:
  - (i) the purpose must be beneficial, rather than detrimental or neither beneficial nor detrimental, to people (the *benefit limb*); and
  - (ii) the class of persons eligible to benefit from the purpose must constitute the public, or a sufficient section of the public (the *public limb*); and
- (b) the purpose must fall within the spirit and intendment of the preamble to the Statute of Charitable Uses 1601 (43 Eliz c4) (the *spirit and intendment requirement*).

### **13 The public benefit requirement**

- (1) Subject to this section, determining whether a purpose meets the public benefit requirement in paragraph 12(a) is a question of fact to be determined on the evidence before the decision-maker.
- (2) If a purpose satisfies the spirit and intendment test under paragraph 14(a), the purpose is presumed to benefit the public under paragraph 12(a) in the absence of evidence to the contrary (the *presumption of public benefit*).
- (3) A charity may not be carried on for the private pecuniary profit of an individual, but incidental private benefit does not of itself cause a purpose of an entity to fail the public benefit requirement in paragraph 12(a). ~~For the avoidance of doubt, a purpose that benefits individuals may meet the public benefit requirement in paragraph 12(a) if, having regard to the wider public benefits, the purpose benefits the public more than it benefits individuals as a question of fact.~~

- (4) A purpose of an entity does not fail the public limb of the public benefit requirement in paragraph 12(a) simply because the beneficiaries of the trust, or the members of the society or institution, are related by blood.

Compare: 2005 No 39 s 5(2)(a)

#### **14 The spirit and intendment requirement**

A purpose may meet the spirit and intendment requirement in paragraph 12(b) in any of the following ways:

- (a) by being a purpose recognised as charitable within the parameters of section 15 (*Meaning of charitable purpose*);
- (b) by analogy with a purpose previously considered to be charitable;
- (c) by presumption: a purpose that operates for the benefit of the public within the meaning of paragraph 12(a) is presumed to meet the spirit and intendment test, and therefore to be charitable, in the absence of good reason for holding otherwise (the *presumption of charity*).

#### **15 Meaning of charitable purpose**

- (1) In this Act, unless the context otherwise requires, **charitable purpose** includes every charitable purpose, whether it relates to:
- (a) advancing social or public welfare, including by:
    - (i) preventing or relieving the poverty or economic hardship, distress or other disadvantage of individuals or families;
    - (ii) caring for and supporting those in need because of age, ill-health, disability, or disadvantage;
    - (iii) caring for, supporting and protecting children and young individuals (and in particular, providing child care services);
    - (iv) the integration of those who are disadvantaged and the promotion of their full participation in society;
    - (iv) assisting the rebuilding, repairing or securing of assets after a disaster;
    - (v) promoting or facilitating social or affordable housing;
    - (vi) promoting community development to enhance social and economic participation;
    - (vii) providing recreational facilities, or organising recreational activities;
  - (b) advancing education;
  - (c) advancing religion, including:
    - (i) a religion which involves belief in more than one god; and
    - (ii) any analogous philosophical belief (whether or not involving belief in a god);
  - (d) promoting health, including through preventing or relieving sickness, disease or human suffering;
  - (e) advancing arts, culture and heritage, including by:

- (i) promoting and fostering culture;
    - (ii) the care, preservation and protection of heritage of Aotearoa New Zealand;
    - (iii) the practice and development of tikanga Māori;
    - (iv) the practice, development and protection of te reo Māori;
  - (f) promoting or protecting civil and human rights, including by:
    - (i) promoting conflict resolution or reconciliation;
    - (ii) promoting peace, harmonious community relations and mutual respect and tolerance, including by:
      - (A) promoting religious or racial harmony; and
      - (B) promoting equality and diversity;
  - (g) advancing citizenship or community development, including by:
    - (i) rural or urban regeneration; and
    - (ii) promoting civic responsibility, volunteering and the for-purpose sector;
  - (h) advancing public participation in sport (meaning sports or games which promote health by involving physical or mental skill or exertion);
  - (i) advancing animal welfare;
  - (j) protecting the natural environment;
  - (k) advancing environmental sustainability;
  - (l) promoting democratic values and institutions, including by delivering or promoting public interest journalism; or
  - (m) any other matter beneficial to the community,
- and includes any other purpose within the meaning of charitable purpose in section 2 of the Charitable Trusts Act 1957.
- (2) A **marae** has a charitable purpose if the physical structure of the marae is situated on land that is a Māori reservation referred to in Te Ture Whenua Māori Act 1993 (Māori Land Act 1993) and the funds of the marae are not used for a purpose other than –
- (a) the administration and maintenance of the land and of the physical structure of the marae;
  - (b) a purpose that is a charitable purpose other than under this subsection.
- (3) A **post-settlement governance entity** has a charitable purpose if:
- (a) the overall purpose of the post-settlement governance entity is to help its iwi redress and recover from the economic, social, political and cultural deprivation suffered by the iwi and its members as a result of breaches of Te Tiriti o Waitangi; and
  - (b) all activities of the organisation are carried out in furtherance of that purpose.



Compare: 2005 No 39 s 5; 1957 No 18 s 2; Charities Act 2013 (Cth), s 12; Charities Act 2011 (UK), s 3; Charities Act 2009 (Ireland), s 3; Charities and Trustee Investment (Scotland) Act 2005, s 7; Charities Act (Northern Ireland) 2008, s 2

## 16 Relevance of potential fiscal consequences

To avoid doubt, the potential fiscal consequences of registration under this Act are not relevant to an assessment of whether a purpose is charitable.

## 17 Ancillary purposes

- (1) To avoid doubt, if the purposes of an entity include a non-charitable purpose that is merely **ancillary** to a charitable purpose of the entity, the presence of that non-charitable purpose does not prevent the entity's purposes from being exclusively charitable.
- (2) For the purposes of subsection (1), a non-charitable purpose is ancillary to a charitable purpose of the entity if, as a matter of equitable principle, the non-charitable purpose is ancillary, secondary, or subordinate to a charitable purpose of the entity.

Compare: 2005 No 39 s 5(3) and (4)

## 18 Activities

- (1) The tests in sections 12 (*Test for whether a purpose is charitable*) and 17 (*Ancillary purposes*) apply to purposes, not activities. An inference may be drawn as to an entity's purpose in light of its activities only where the entity's rules are unclear as to its purpose or where there is evidence of activities that displace or belie its stated purposes.
- (2) The primary relevance of a consideration of activities in the context of registration under this Act is to assess whether they are carried out in furtherance of an entity's stated charitable purposes, and otherwise in accordance with the entity's rules.
- (3) To avoid doubt, subject to this Act, and the registered charitable entity's rules, a registered charitable entity may –
  - (a) make social investments, even if they might not maximise financial return, provided that the entity considers on reasonable grounds that making the investment is in the best interests of the entity's stated charitable purposes:
  - (b) support social enterprise, even if the recipient entity may not itself be a registered charitable entity, provided that the entity considers on reasonable grounds that supporting the social enterprise is in the best interests of the entity's stated charitable purposes:
  - (c) utilise commercial means to further its stated charitable purposes:
  - (d) utilise political means to further its stated charitable purposes, provided that a registered charitable entity may not engage in:
    - (i) hate speech:
    - (ii) partisan political activity, such as promoting or opposing a particular political party, elected official, or candidate for political office.
- (4) To avoid doubt, for speech to constitute "hate speech" it must reach a very high threshold, such as incitement to violence or the equivalent.

## **PART 3 - TE KAIRĒHITA AROHA – THE CHARITIES REGISTRAR**

### **19 Purpose of this Part**

The purpose of this Part is to –

- (a) establish Te Kairēhita Aroha - the Charities Registrar;
- (b) state the functions and powers of Te Kairēhita Aroha; and
- (c) require Te Kairēhita Aroha to –
  - (i) have regard to certain matters; and
  - (ii) comply with certain other obligations; and
- (d) set out the mechanisms by which registered charitable entities and the public may hold Te Kairēhita Aroha accountable for its administration of this Act.

#### *Establishment of Te Kairēhita Aroha*

### **20 Establishment of Te Kairēhita Aroha**

- (1) This section establishes an organisation known as Te Kairēhita Aroha.
- (2) Te Kairēhita Aroha is an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to Te Kairēhita Aroha except to the extent that this Act expressly provides otherwise.

### **21 Membership of Te Kairēhita Aroha**

- (1) The Governor-General, on the recommendation of the House of Representatives, must appoint 3 members of Te Kairēhita Aroha as follows:
  - (a) 1 member as the chairperson; and
  - (b) 1 member as the deputy chairperson; and
  - (c) 1 other member.
- (2) The member appointed under subsection (1)(c) is the chief executive of Te Kairēhita Aroha.
- (3) The members of Te Kairēhita Aroha are the board for the purposes of the Crown Entities Act 2004.
- (4) Subsection (1) applies despite –
  - (a) section 28(1)(b) of the Crown Entities Act 2004; and
  - (b) clause 1(2) of schedule 5 of the Crown Entities Act 2004.

Compare: 1993 No 87 s 4D; 2001 No 10 s 7

### **22 Functions of Te Kairēhita Aroha**

- (1) The functions of Te Kairēhita Aroha are to –
  - (a) in consultation with Te Māngai Aroha – the Advisory Board, encourage charitable giving, and public support of and involvement with the for-purpose sector, and in particular the charitable sector;
  - (b) inform public choice, by:

- (i) maintaining a register of entities registered under this Act and carrying out other functions relating to the register;
- (ii) receiving, considering and processing applications for registration under this Act;
- (iii) receiving financial statements, annual returns and other documents submitted by registered charitable entities for registration under this Act;
- (iv) monitoring registered charitable entities to ensure that entities that are registered under this Act continue to act in furtherance of their stated charitable purposes, in accordance with their rules, and otherwise in accordance with this Act;
- (v) inquiring into registered 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 registered charitable entity;
- (vi) performing or exercising other functions, duties and powers conferred upon it by this Act or the regulations;
- (c) provide education and support to registered charitable entities to assist them to meet their obligations under this Act;
- (d) make appropriate information available to the public to –
  - (i) assist persons to make registration applications under this Act;
  - (ii) increase public awareness of the existence of the register and its benefits;
  - (iii) promote compliance with this Act; and
  - (iv) encourage charitable giving, and public support of and involvement with the for-purpose sector, and in particular the charitable sector;
- (e) carry out any functions that are incidental and related to, or consequential on, its functions set out in paragraphs (a) to (d).

## **23 Duty to promote public awareness of functions**

Te Kairēhita Aroha must carry out the activities it considers necessary to make its functions known to, and understood by, the public.

Compare: 2019 No 66 s 13

## **24 Powers of Te Kairēhita Aroha**

- (1) Te Kairēhita Aroha has and may exercise all powers necessary for performing its functions and duties.
- (2) In exercising its powers, Te Kairēhita Aroha must:
  - (a) act in a manner consistent with its functions and current statement of intent;
  - (b) have regard to the purposes and principles of this Act;
  - (c) act in accordance with any binding policy statement issued by the Māori Advisory Committee under section 47 (*Tikanga Māori Policy Statements*):

- (d) refer any registration or administration decision that raises a matter of tikanga, including but not limited to the question of whether any entity should be recognised as a kaupapa Māori charity, to the Māori Advisory Committee for advice.

Compare: 2019 No 66 s 14

## **25 Te Kairēhita Aroha may regulate own procedures**

- (1) Subject to this Act, Te Kairēhita Aroha may regulate its own procedures for performing its functions and duties as Te Kairēhita Aroha considers appropriate.
- (2) Te Kairēhita Aroha's procedures must be consistent with the rules of natural justice and the principles of te Tiriti o Waitangi.
- (3) Te Kairēhita Aroha must make its procedures publicly available, in the manner it considers appropriate.

Compare: 2019 No 66 s 15

## **26 Independence of Te Kairēhita Aroha**

Te Kairēhita Aroha must act independently, impartially and fairly in performing its functions and duties and exercising its powers under this Act.

Compare: 1993 No 87 s 7; 2019 No 66 s 16

### *Accountability of Te Kairēhita Aroha*

## **27 Statement of intent**

- (1) Notwithstanding sections 138 to 149A of the Crown Entities Act 2004, Te Kairēhita Aroha must, at least once in every 3-year period, prepare and publish on its website a statement of intent setting out the strategic objectives that it intends to achieve or contribute to (**strategic intentions**), and how it intends to manage its functions and operations to meet its strategic intentions.
- (2) In preparing its statement of intent, Te Kairēhita Aroha must:
  - (a) consult with Te Māngai Aroha;
  - (b) comply with any binding policy statements issued by the Māori Advisory Committee of Te Māngai Aroha; and
  - (c) have regard to:
    - (i) any feedback received from stakeholders under section 31 (*Annual meeting/hui*); and
    - (ii) the civil society strategy.

## **28 Annual report**

- (1) Notwithstanding sections 150 to 156 of the Crown Entities Act 2004, and without limiting the right of Te Kairēhita Aroha to report at any other time, Te Kairēhita Aroha shall in each year make a report to the House of Representatives on the performance of Te Kairēhita Aroha's functions under this Act, an assessment of its progress in relation to its strategic intentions as set out in its most recent statement of intent, and on any other matters Te Kairēhita Aroha considers appropriate.

- (2) Without limiting the generality of subsection (1), Te Kairēhita Aroha must demonstrate in its annual report how it has promoted the purposes of this Act, and how it has complied with any binding policy statements issued by the Māori Advisory Committee under section 47 (*Tikanga Māori policy statements*).
- (3) Te Kairēhita Aroha shall also provide its annual report to Te Māngai Aroha.
- Compare: 1986 No 127 s 23; 2004 No 115 s 151(2)

## **29 Audit report**

Te Kairēhita Aroha is a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Compare: Charities Bill 108-2 clause 120

## **30 Tax status**

Te Kairēhita Aroha is a public authority for the purpose of the Inland Revenue Acts.

Compare: Charities Bill 108-2 clause 121

## **31 Annual meeting/hui**

- (1) Te Kairēhita Aroha must hold, no later than 30 November in each year, -
- (a) at least 1 annual meeting with representatives of registered charitable entities, for all registered charitable entities; and
  - (b) at least 1 annual meeting with representatives of registered charitable entities that identify as kaupapa Māori charities.
- (2) However, Te Kairēhita Aroha is not required to hold an annual meeting in the 12-month period after its establishment.
- (3) Each annual meeting must be open to the public to attend in person or by electronic means.
- (4) The Minister, or representatives of the Minister, or both, must attend at least 1 of each type of annual meeting specified in subsection (1) in each year in which a meeting is held.
- (5) Te Kairēhita Aroha may hold an annual meeting in 1 or more areas or regions.
- (6) Te Kairēhita Aroha must give not less than 30 days' written notice of each annual meeting:
- (a) on a website maintained by, or on behalf of, Te Kairēhita Aroha ; and
  - (b) otherwise as Te Kairēhita Aroha considers will best notify persons who may be interested in attending, both in the area or region in which the meeting will be held and nationally;
- (7) At each annual meeting, Te Kairēhita Aroha must -
- (a) table its annual report and financial statements, and report on the operation of Te Kairēhita Aroha during the preceding financial year and its progress in relation to its statement of intent; and
  - (b) report on any matters of which Te Kairēhita Aroha has knowledge that may significantly affect the for-purpose sector in the current financial year; and
  - (c) provide details of:

- (i) the number of applications for registration received since the previous annual meeting;
  - (ii) a breakdown of the applications received, including the number that have been declined and the number that have been voluntarily withdrawn, and the reasons why;
  - (iii) the average amount of time it has taken for an application to be processed in the period since the previous annual meeting;
  - (iv) the number of entities that have been deregistered since the previous annual meeting, and the reasons why;
  - (v) objections and appeals in the period since the previous annual meeting; and
- (d) give a reasonable opportunity for persons who attend the meeting to –
- (i) ask questions concerning the operation of this Act during the preceding financial year and Te Kairēhita Aroha's activities to advance and achieve the purposes of this Act; and
  - (ii) make submissions to Te Kairēhita Aroha concerning the operation of this Act and of Te Kairēhita Aroha during the preceding financial year; and
  - (iii) ask questions concerning the matters referred to in paragraph (c) and to make submissions to Te Kairēhita Aroha concerning those matters.
- (8) Nothing in subsection (6) requires Te Kairēhita Aroha to disclose any information if disclosure of that information would involve a breach of confidence, of trust, of contract, of any enactment, or of any other rule of law.

Compare: 2005 No 39 s12

## **32 Appeals**

- (1) A person who is aggrieved by a decision of Te Kairēhita Aroha under this Act may appeal to a hearing authority.
- (2) An appeal under this section must be made by lodging a notice of appeal with the Registrar of the relevant hearing authority and with Te Kairēhita Aroha within –
  - (a) 90 working days after the date of the decision; or
  - (b) any further time that the hearing authority may allow on application made before or after the expiration of that period.
- (3) Every notice of appeal must specify –
  - (a) the decision or the part of the decision appealed from; and
  - (b) the grounds of appeal in sufficient detail to fully inform the hearing authority and Te Kairēhita Aroha of the issues in the appeal; and
  - (c) the relief sought.
- (4) For the purposes of hearing the appeal, the hearing authority shall have all the powers vested in its civil jurisdiction, including full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.

- (5) The parties may agree that all or part of the evidence before Te Kairēhita Aroha be treated as evidence for the purposes of the hearing.
- (6) The notice of appeal shall name Te Kairēhita Aroha – the Charities Registrar as the respondent.
- (7) The notice of appeal may also name the Attorney-General as a respondent.
- (8) The hearing authority may make any order, including any interim order, and give such directions as it thinks fit.
- (9) An order may be subject to any terms or conditions that the hearing authority thinks fit.
- (10) Nothing in this section affects the right of any person to apply, in accordance with law, for judicial review.

Compare: 2005 No 39 ss 59 to 61; 1993 No 105 s 370; 1908 No 212 s 34B; 1908 No 81 ss13B and 13BA; 1982 No 118 s 151; Exposure Draft Incorporated Societies Bill, clause 187(1)

### **33 Test cases**

Where an appeal has or may have broader implications beyond an individual dispute, Te Kairēhita Aroha may, following consultation with Te Māngai Aroha – the Advisory Board, provide test case litigation funding to support the disputant in bringing the appeal.

## **PART 4 – TE MĀNGAI AROHA - ADVISORY BOARD**

### *Te Māngai Aroha*

### **34 Establishment of Te Māngai Aroha**

There is hereby established an advisory board to be called Te Māngai Aroha – the Advisory Board.

### **35 Membership**

- (1) The members of Te Māngai Aroha shall be appointed by the Minister having regard to the interests of the for-purpose sector, the social capital of New Zealand and the wellbeing of New Zealanders. Te Māngai Aroha shall consist of –
  - (a) 2 persons with experience and knowledge of te reo, tikanga and Te Tiriti, appointed after consultation with the Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti;
  - (b) 2 persons with expertise in the law of charities and/or the law of trusts, appointed after consultation with the Attorney-General;
  - (c) 14 persons with experience and knowledge of the for-purpose sector, appointed after consultation with:
    - (i) the Minister for Child Poverty Reduction, the Minister for Children and the Minister for Youth;
    - (ii) the Minister for the Environment, the Minister for Climate Change and the Minister of Conservation;
    - (iii) the Minister of Housing;

- (iv) the Minister for Disability Issues, the Minister for Seniors, the Minister for Women, the Minister for Veterans and the Minister for Rural Communities;
  - (v) the Minister for Pacific Peoples and the Minister for Ethnic Communities;
  - (vi) the Minister for Social Development and the Minister of Local Government;
  - (vii) the Minister for Arts, Culture and Heritage;
  - (viii) the Minister for Sport and Recreation;
  - (ix) the Minister of Commerce and Consumer Affairs, the Minister for Economic Development, the Minister for Regional Economic Development, and the Minister for Urban Development;
  - (x) the Minister of Broadcasting, Communications and Digital Media;
  - (xi) the Minister of Foreign Affairs and the Minister of Civil Defence;
  - (xii) the Minister of Education and the Minister of Research Science and Innovation;
  - (xiii) the Minister of Health and the Minister for Whānau Ora; and
  - (xiv) the Minister of Finance, the Minister of Revenue and the Minister of Justice.
- (d) 3 persons appointed following public notice given in accordance with subsection (2).
- (2) Every notice required by subsection (1)(e) shall –
- (a) state the number of appointments intended to be made to Te Māngai Aroha;
  - (b) call for nominations for membership of Te Māngai Arohato be sent to the Minister;
  - (c) state a date, being not less than 28 days after the date of the first publication of the notice, after which the Minister may decline to accept such nominations;
  - (d) be published –
    - (i) at least twice in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
    - (ii) on an internet site that is maintained by or on behalf of Te Māngai Aroha; and
    - (iii) in such other communications media and on such occasions as the Minister may direct.
- (3) Every appointment of a member of Te Māngai Aroha shall be made by notice published in the *Gazette*, and shall take effect from the date of such notice or such later date as may be specified in the notice.
- (4) No person employed by Te Kairēhita Aroha shall be eligible for appointment as a member of Te Māngai Aroha.

Compare: 1987 No 65 s 6D



### 36 Functions of Te Māngai Aroha

- (1) The functions of Te Māngai Aroha shall be to advance the interests of the for-purpose sector, in particular the charitable sector, including by:
  - (a) advocating for the collective interests of charities and their status in society, including by encouraging and participating in educational and publicity activities for the purpose of bringing about a better understanding of the charitable sector in Aotearoa New Zealand and its importance and value, and encouraging charitable giving, and public support of and involvement with the charitable sector;
  - (b) improving communications and relations between the charitable sector and government;
  - (c) advising the Minister on the civil society strategy under section 5(2) (*Civil society strategy*), and on charities law and policy;
  - (d) educating and assisting charities, whether registered under this Act or not, in relation to matters of good governance and management, for example, by –
    - (i) issuing guidelines or recommendations on the best practice to be observed by charities and by persons concerned with the management or administration of charities;
    - (ii) issuing templates or model rules;
    - (iii) providing information to charities about their rights, duties and obligations under this Act and other enactments;
  - (e) appointing the members of the Māori Advisory Committee under section 45 (*Establishment of Māori Advisory Committee*);
  - (f) liaising with Te Kairēhita Aroha, and assisting Te Kairēhita Aroha on issues relating to its administration of this Act, including on giving effect to the principles of Te Tiriti o Waitangi and tikanga Māori;
  - (g) considering, and reporting and making recommendations on, any matter relating to charities;
  - (h) stimulating and promoting research into any matter relating to charities, whether registered under this Act or not, for example by:
    - (i) collecting and disseminating information or research about charities;
    - (ii) advising on areas where further research or information about charities should be undertaken or collected;
    - (iii) entering into contracts or arrangements for research or information about charities to be undertaken or collected;
  - (i) carry out any functions that are incidental and related to, or consequential on, its functions set out in paragraphs (a) to (h).
- (2) Te Māngai Aroha shall have such other functions as are conferred on it by or under this Act or any other Act.

### **37 Powers of Te Māngai Aroha**

- (1) Te Māngai Aroha shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.
- (2) Without limiting the generality of subsection (1), Te Māngai Aroha may –
  - (a) establish committees of members and other suitable persons, and delegate to them any of its powers and functions:
  - (b) release for public information, in such form as it thinks fit, any recommendation, report, or advice made or given by Te Māngai Aroha to the Minister or Te Kairēhita Aroha:
  - (c) advocate the interests of Te Māngai Aroha at any public forum, which power shall include the right to appear before courts and tribunals in New Zealand and be heard on matters affecting or relating to Te Māngai Aroha's functions.
- (3) Te Māngai Aroha shall establish a Māori Advisory Committee under subsection (2)(a) in accordance with sections 45 to 47 (*Māori Advisory Committee*),

Compare: 1987 No 65 s 6C

### **38 Annual report**

- (1) Te Māngai Aroha shall in each year make a report to the Minister on the exercise of its powers and functions.
- (2) A copy of the annual report shall be laid by the Minister before the House of Representatives as soon as practicable after it has been received by that Minister.
- (3) Notwithstanding section 37(2)(b) (*Powers of Te Mangai Aroha*), Te Māngai Aroha shall release its annual report for public information after it has been laid before the House of Representatives.

Compare: 1987 No 65 s 6E, s6C(4)

### **39 Term of office of members of Te Māngai Aroha**

- (1) Subject to subsections (2) to (5), every member of Te Māngai Aroha shall hold office for such term, not exceeding 3 years, as the Minister shall specify in the notice of appointment, and may from time to time be reappointed.
- (2) Any member of Te Māngai Aroha may at any time be removed from office by the Minister for bankruptcy, inability to perform the functions of the office, neglect of duty, or misconduct.
- (3) Any member of Te Māngai Aroha may at any time resign their office by writing addressed to the Minister.
- (4) If any member of Te Māngai Aroha appointed under any of paragraphs (a) to (c) of section 35(1) (*Membership*) dies, resigns, or is removed from office, the Minister must fill the vacancy so created in the manner in which the appointment to the vacant office was originally made.
- (5) If any member of Te Māngai Aroha appointed under paragraph (d) of section 35(1) (*Membership*) dies, resigns, or is removed from office, the Minister must fill the vacancy so created

- (i) in the manner in which the appointment to the vacant office was originally made; or
  - (ii) by appointing, in accordance with section 35(3) (*Membership*), a person selected from the nominations received in response to the most recent call for nominations under section 35(2).
- (6) A person appointed to be a member of Te Māngai Aroha under subsection (4) or subsection (5) holds office for the residue of the term for which the vacating member was appointed.
- (7) Unless a member sooner dies, resigns, or is removed from office, every member of Te Māngai Aroha shall continue in office until that member's successor comes into office, notwithstanding that the term for which that member was appointed may have expired.

Compare: 1987 No 65 s 6F

#### **40 Chairperson of Te Māngai Aroha**

- (1) The Minister shall, by the notice appointing the members of Te Māngai Aroha or by a subsequent notice published in the *Gazette*, appoint one of the members to be chairperson of Te Māngai Aroha for the term of that member's appointment or for such lesser period as the Minister thinks fit.
- (2) The chairperson shall preside at all meetings of Te Māngai Aroha at which they are present.
- (3) If the chairperson is absent from any meeting of Te Māngai Aroha, the members present shall appoint one of their number to be the chairperson of that meeting.

Compare: 1987 No 65 s 6G

#### **41 Meetings of Te Māngai Aroha**

- (1) Meetings of Te Māngai Aroha shall be held at such times and places as Te Māngai Aroha or the chairperson from time to time appoints.
- (2) A special meeting shall be called by the chairperson whenever 3 or more members so request in writing.
- (3) At any meeting of Te Māngai Aroha, a majority of the members in office shall form a quorum, and no business shall be transacted at any meeting unless such a quorum is present.
- (4) Every question before any meeting of Te Māngai Aroha shall be determined by a majority of the members present and voting on the question, and proper minutes shall be kept of proceedings.
- (5) At any meeting of Te Māngai Aroha, the chairperson of that meeting shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.
- (6) The powers of Te Māngai Aroha shall not be affected by any vacancy in its membership, nor shall the proceedings of Te Māngai Aroha be invalidated merely because of the subsequent discovery that some defect existed in the appointment of any member.
- (7) Subject to the provisions of this Act, Te Māngai Aroha may regulate its procedure in such manner as it thinks fit.

Compare: 1987 No 65 s 6H

#### **42 Te Kairēhita Aroha entitled to attend meetings of Te Māngai Aroha**

Notice in writing of every meeting of Te Māngai Aroha and of the business proposed to be transacted at that meeting shall be given to Te Kairēhita Aroha, which shall be entitled to be represented at the meeting by a representative, who may attend and speak at any such meeting, but shall not be entitled to vote on any question.

Compare: 1987 No 65 s 6I

#### **43 Servicing of Te Māngai Aroha**

Te Māngai Aroha shall be serviced by the Department of Internal Affairs in such manner as the Minister may from time to time direct.

Compare: 1987 No 65 s 6J

#### **44 Fees and travelling expenses of members of Te Māngai Aroha**

- (1) Te Māngai Aroha is hereby declared to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) There shall be paid to members of Te Māngai Aroha, out of money appropriated by Parliament for the purpose, remuneration by way of fees, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Compare: 1987 No 65 s 6k

#### *Māori Advisory Committee*

#### **45 Establishment of Māori Advisory Committee**

- (1) Te Māngai Aroha shall appoint, from amongst its number or not, 3 persons of mana with expertise in tikanga to form a Māori Advisory Committee.
- (2) The members of the Māori Advisory Committee shall hold office for such term not exceeding 3 years as Te Māngai Aroha may decide at the time of appointment. Retiring members shall be eligible for reappointment.

#### **46 Role of Māori Advisory Committee**

- (1) Te Kairēhita Aroha must refer to the Māori Advisory Committee any registration or administration decision that raises or may raise a matter of tikanga. The Māori Advisory Committee shall provide advice to Te Kairēhita Aroha to assist it to give effect to its obligation to recognise and respect the principles of Te Tiriti o Waitangi and tikanga principles. Te Kairēhita Aroha must have regard to that advice.
- (2) Tikanga principles must always be viewed as mixed questions of fact and law, and must be determined for the relevant group or collective, as the principles may differ from group to group. In determining tikanga principles for a particular group, the Māori Advisory Committee may convene an oral hearing, and may hear submissions from affected parties as to how tikanga principles apply in the particular context being considered.

Compare: Taumata Arowai – the Water Services Regulator Bill 202-1 clauses 14-17

## **47 Tikanga Māori policy statements**

- (1) The Māori Advisory Committee may from time to time issue policy statements on matters of tikanga Māori.
- (2) Tikanga Māori policy statements are binding on Te Kairēhita Aroha and on any hearing authority hearing an appeal of a decision of Te Kairēhita Aroha.
- (3) The Māori Advisory Committee may from time to time amend a policy statement issued under subsection (1) in the same way as such a policy statement would be issued under subsection (1).

## **PART 5 – REGISTERED CHARITABLE ENTITIES**

### **Subpart 1 – Applications for registration**

#### *Eligibility*

## **48 Eligibility for registration**

- (1) An entity is eligible for registration under this Act if, -
  - (a) in the case of the trustees of a trust, the trust is of a kind in relation to which an amount of income is derived by the trustees in trust for charitable purposes; and
  - (b) in the case of a society or institution, the society or institution -
    - (i) is established and maintained exclusively for charitable purposes; and
    - (ii) is not carried on for the private pecuniary profit of any individual; and
  - (c) the activities of the entity are carried out in accordance with its rules and in the best interests of its stated charitable purposes;
  - (d) the entity has a name that complies with section 49 (*Name of entity*); and
  - (e) the entity has at least 3 responsible persons;
  - (f) all of the responsible persons of the entity are qualified to be responsible persons of a registered charitable entity under section 50 (*Qualifications of responsible persons of registered charitable entities*); and
  - (g) the entity has a designated contact officer (see sections 51 and 52 (*Contact officer*)).
- (2) The trustees of a trust must be treated as complying with subsection (1)(a) if, -
  - (a) in accordance with a ruling made under Part 5A of the Tax Administration Act 1994, -
    - (i) an amount of income derived by the trustees in trust is treated as having been derived by the trustees in trust for charitable purposes for the purposes of section CW 41 of the Income Tax Act 2007; or
    - (ii) income is treated as having been derived directly or indirectly from a business carried on by, or for, or for the benefit of, the trustees in trust for charitable purposes for the purposes of section CW 42 of the Income Tax Act 2007; or
    - (iii) the income derived by the trustees is deemed to be income derived by trustees in trust for charitable purposes under section 24B of the Māori

Trust Boards Act 1955.

- (3) A society or an institution must be treated as complying with subsection (1)(b) if, in accordance with a ruling made under Part 5A of the Tax Administration Act 1994, that society or institution is treated as being a society or institution that is established and maintained exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual for the purposes of section CW 41 or CW 42 of the Income Tax Act 2007.
- (4) Subsections (2) and (3) cease to apply in relation to an entity if –
  - (a) the period for which the ruling applies has expired; or
  - (b) the ruling has ceased to apply because of section 91G of the Tax Administration Act 1994; or
  - (c) the ruling has otherwise ceased to apply to the entity.
- (5) Despite subsections (1) to (3), an entity does not qualify for registration under this Act if the entity –
  - (a) is a designated terrorist entity as defined in section 4(1) of the Terrorism Suppression Act 2002; or
  - (b) has been convicted of any offence under sections 6A to 13E of the Terrorism Suppression Act 2002; or

Compare: 2005 No 39 ss 13 and 18(4); Exposure Draft Incorporated Societies Bill clause 37(1)

#### **49 Name of entity**

The name of an entity complies with this section if –

- (a) the entity is incorporated under that name under the Incorporated Societies Act 1908; or
- (b) the entity is incorporated under that name under the Charitable Trusts Act 1957; or
- (c) the entity is incorporated under that name under the Companies Act 1993; or
- (d) the entity is established, or constituted, by an Act under that name; or
- (e) in any other case, in the opinion of Te Kairēhita Aroha, the name is not –
  - (i) offensive; or
  - (ii) liable to mislead the public.

Compare: 2005 No 39 s 15

#### **50 Qualifications of responsible persons of registered charitable entities**

- (1) A person who is not disqualified by this section is qualified to be a responsible person of a registered charitable entity.
- (2) The following persons are disqualified from being responsible persons of registered charitable entities:
  - (a) an individual who is under the age of 16 years:
  - (b) an individual who is an undischarged bankrupt:

- (c) a body corporate that is being wound up, is in liquidation or receivership, or is subject to statutory management under the Corporations (Investigation and Management) Act 1989:
  - (d) a person who has been convicted of either of the following and has been sentenced for the offence within the last 7 years:
    - (i) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961):
    - (ii) an offence under section 143B of the Tax Administration Act 1994:
    - (iii) an offence under subpart 6 (*Offences*) of Part 4 of the **Incorporated Societies Act 2021**:
    - (iv) an offence under this Act:
    - (v) an offence, in a country other than Aotearoa New Zealand, that is substantially similar to an offence specified in subparagraphs (i) to (iv):
    - (vi) a money laundering offence or an offence relating to the financing of terrorism, whether in Aotearoa New Zealand or elsewhere:
  - (e) an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Financial Markets Conduct Act 2013, or the Takeovers Act 1993:
  - (f) a person subject to –
    - (i) a banning order under subpart 7 (*Banning order*) of Part 4 of the **Incorporated Societies Act 2021** or sections 152 to 154 (*Banning orders*) of this Act; or
    - (ii) an order under section 108 of the Credit Contracts and Consumer Finance Act 2003; or
    - (iii) a confiscation order under the Proceeds of Crime Act 1991; or
    - (iv) a property order made under the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:
  - (g) in relation to any particular entity, a person who does not comply with any qualifications for responsible persons contained in the rules of that entity.
- (3) Subsection (2) does not apply to a responsible person of an entity if that person was appointed, under an Act, by the Governor-General, by the Governor-General in Council, or by a Minister.
- (4) Te Kairēhita Aroha may, on an application made in the prescribed manner (if any) and by written notice to an entity, waive the application of any of the disqualifying factors set out in subsection (2)(b) to (f) in relation to a particular person and that entity.
- (5) If Te Kairēhita Aroha waives the application of a disqualifying factor set out in subsection (2)(b) to (f) in relation to an entity, the person to whom the waiver relates must not be treated as being disqualified from being a responsible person of the registered charitable entity because of that factor.

#### Example

The charitable purposes of ABC Incorporated include providing services to facilitate or promote the rehabilitation and reintegration of offenders who have been released from prison. Te Kairēhita Aroha considers that it may be useful for the governing body of the charity to include a person who has been convicted of an offence identified in section 50(2)(d). Te Kairēhita Aroha accordingly waives the disqualifying factor in that paragraph in relation to a particular person

- (6) The waiver may be granted on the terms or conditions that Te Kairēhita Aroha thinks fit.
- (7) Te Kairēhita Aroha may, by written notice to an entity, –
  - (a) vary a waiver in the same way as a waiver may be granted under this section:
  - (b) revoke a waiver granted under this section.

Compare: 2005 No 39 s 16; Exposure Draft Incorporated Societies Bill, clauses 39-41

#### *Contact officer*

### **51 Purpose**

The purpose of section 52 (*Contact officer*) is to provide for every registered charitable entity to have an officer whom Te Kairēhita Aroha can contact when needed.

Compare: Exposure Draft Incorporated Societies Bill clause 42

### **52 Contact officer**

- (1) Every registered charitable entity must at all times have a contact officer.
- (2) In the event of a vacancy in the position of contact officer, the registered charitable entity does not breach subsection (1) if the position is filled within 20 working days after the vacancy occurs.
- (3) A registered charitable entity's contact officer must be –
  - (a) at least 18 years of age; and
  - (b) ordinarily resident in New Zealand.
- (4) The office of contact officer may be held separately or in conjunction with any other office in the registered charitable entity.
- (5) In this section, a person is **ordinarily resident in New Zealand** if that person –
  - (a) is domiciled in New Zealand; or
  - (b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period.

Compare: Exposure Draft Incorporated Societies Bill clause 43



## *Applications for registration*

### **53 Application for registration**

- (1) An entity that is eligible under section 48 (*Eligibility for registration*) may apply to Te Kairēhita Aroha for registration under this Act.
- (2) An application for registration under this Act must –
  - (a) provide information demonstrating that the entity meets the eligibility requirements for registration under section 48 (*Eligibility for registration*);
  - (b) include the legal name of the entity and any other names, including trading names, by which the entity is known;
  - (c) be accompanied by a document in the prescribed form signed by, or on behalf of, every person who is a responsible person of the entity, that contains a certification that the person is not disqualified from being a responsible person of a registered charitable entity under section 50 (*Qualifications of responsible persons of registered charitable entities*);
  - (d) contain the entity's physical address for service;
  - (e) contain the name and contact details of the entity's nominated contact officer;
  - (f) be accompanied by a copy of the rules of the entity;
  - (g) be accompanied by the prescribed fee for the application (if any);
  - (h) contain or be accompanied by any other prescribed information; and
  - (i) otherwise be made in the prescribed manner.
- (2) If a request for a waiver under section 50 (*Qualifications of responsible persons of registered charitable entities*) has been made in relation to a person and an entity, the document referred to in subsection (2)(c) is not required to contain a certification referred to in that paragraph in relation to that person.

Compare: 2005 No 39 s 17; Exposure Draft Incorporated Societies Bill, clause 9

### **54 Te Kairēhita Aroha to consider application**

- (1) Te Kairēhita Aroha must, as soon as practicable after receiving a properly-completed application for registration of an entity under this Act, consider whether the entity meets the requirements for eligibility for registration set out in section 48 (*Eligibility for registration*).
- (2) In considering whether the applicant is eligible for registration under section 48 (*Eligibility for registration*), Te Kairēhita Aroha may request that the applicant supply further information or documentation.
- (3) In considering an application, Te Kairēhita Aroha must –
  - (a) have regard to the principles of this Act;
  - (b) have regard to any advice provided by Te Māngai Aroha or any of its committees;
  - (c) refer any matter relating to tikanga to the Māori Advisory Committee, and have regard to any advice provided by the Māori Advisory Committee in relation to the application;

- (d) ensure any matter relating to tikanga is decided in compliance with any applicable binding policy statement issued by the Māori Advisory Committee under section 47 (*Tikanga Māori policy statements*);
- (e) have regard to –
  - (i) the activities of the entity at the time at which the application was made; and
  - (ii) the proposed activities of the entity, to ensure that the activities are or would be –
  - (iii) permitted by the rules of the entity; and
  - (iv) consistent with or supportive of the stated charitable purposes of the entity; and
  - (v) not prohibited by this Act; and
- (f) have regard to any other information provided by the entity in relation to its application; and
- (g) give the applicant –
  - (i) notice of any matter that might result in its application being declined; and
  - (ii) a reasonable opportunity to make submissions to Te Kairēhita Aroha on the matter.

Compare: 2005 No 39 s 18

## **55 Decision on application**

- (1) If the entity applying for registration is eligible for registration under section 48 (*Eligibility for registration*), Te Kairēhita Aroha must –
  - (a) register the entity under this Act;
  - (b) allocate a registration number to the entity;
  - (c) notify the entity of its registration and of its registration number; and
  - (d) provide information to the entity regarding the obligations of registered charitable entities under this Act.
- (2) If the entity applying for registration does not meet the eligibility requirements for registration set out in section 48 (*Eligibility for registration*), Te Kairēhita Aroha must–
  - (a) not register the entity under this Act;
  - (b) notify the entity of Te Kairēhita Aroha's reasons for its decision; and
  - (c) notify the entity of its right to appeal the decision, including of its right to request an oral hearing before a hearing authority.
- (3) If Te Kairēhita Aroha has not notified the applicant of its decision on the applicant's eligibility for registration within 6 months of the date Te Kairēhita Aroha received a properly completed application from the applicant, the applicant may give Te Kairēhita Aroha, in the approved form, written notice that the applicant wishes to

treat the application as having been declined, following which the applicant may appeal that decision to a hearing authority under section 32 (*Appeals*).

Compare: 2005 No 39 s 19; Australian Charities and Not-for-profit Commission Act 2012 s 30-15(2)

## **56 Te Kairēhita Aroha may backdate registration**

- (1) Te Kairēhita Aroha may, if it thinks fit, register a notice in the register of charities that specifies that an entity must be treated as having become registered under this Act at a time (the **effective registration time**) that is before the time at which the entity actually became registered under this Act.
- (2) However, the effective registration time must not be earlier than the time that Te Kairēhita Aroha received a properly-completed application for registration of the entity under this Act, provided that in exceptional circumstances Te Kairēhita Aroha may, following consultation with Te Māngai Aroha, backdate to an earlier date if the interests of justice require it.
- (3) Te Kairēhita Aroha may not exercise its powers under subsection (1) unless the entity was eligible for registration under section 48 (*Eligibility for registration*) at all times during the period between the effective registration time and the time at which the entity actually became registered under this Act.
- (4) If Te Kairēhita Aroha exercises its powers under subsection (1) in relation to an entity, the entity must be treated as having become registered under this Act at the effective registration time for the purposes of this Act and the Inland Revenue Acts.

Compare: 2005 No 39 s 20

## **Subpart 2 – Duties of registered charitable entities**

*Duty to act in accordance with rules and in best interests of stated charitable purposes*

### **57 Duty to act in accordance with rules and in best interests of stated charitable purposes**

Every registered charitable entity, and every responsible person of a registered charitable entity, has a duty to act in accordance with the entity's rules in the best interests of its stated charitable purposes.

Compare: 2019 No 38 ss 24-26; 1993 No 105 ss 131 and 134; Exposure Draft Incorporated Societies Bill clauses 48 and 50

*Duty to keep accounting records*

### **58 Duty to keep accounting records**

- (1) Every registered charitable entity must ensure that there are kept at all times accounting records that –
  - (a) correctly record and explain the transactions of the entity and its financial position and performance; and
  - (b) will allow the entity to produce financial statements that comply with the requirements of this Act; and
  - (c) would enable the financial statements to be readily and properly audited (if required under this Act).

- (2) Every registered charitable entity must establish and maintain a satisfactory system of control of the entity's accounting records and ensure that the financial affairs of the entity are managed in a responsible manner.
- (3) The accounting records must be kept –
  - (a) in written form in English or te reo Māori; or
  - (b) in a form or manner that is easily accessible and convertible into written form in English or te reo Māori.
- (4) The registered charitable entity must retain the records for at least 7 years after the end of the reporting period to which they relate.

Compare: 1994 No 166, s 22(2) and (2BA); Exposure Draft Incorporated Societies Bill, clause 82; Australian Charities and Not-for-Profits Commission Act 2012 s 55-5

## **59 Balance date**

- (1) For the purposes of this Act, –
  - (a) a registered charitable entity may nominate a balance date for the entity –
    - (i) in the application for registration of the entity under this Act; or
    - (ii) in the case of a single entity or an entity that forms part of a single entity, in the application for recognition as a single entity under subpart 2 of Part 6 (*Recognition of group as single entity for purposes of registration*); and
  - (b) a registered charitable entity must be treated as having a balance date of 31 March in each calendar year if a balance date for that charitable entity has not been nominated under paragraph (a).
- (2) Subject to subsection (3), an entity must have a balance date in each calendar year.
- (3) An entity may change its balance date for the purposes of this Act either –
  - (a) without the approval of Te Kairēhita Aroha if –
    - (i) the period between any 2 balance dates does not exceed 15 months; and
    - (ii) the entity continues to have a balance date in each calendar year; or
  - (b) with the approval of Te Kairēhita Aroha before the change is made (and the change may be approved with or without conditions).

Compare: 2005 No 39, s 41(3)-(7); Exposure Draft Incorporated Societies Bill, clause 81

### *Duty to prepare annual returns*

## **60 Duty to prepare annual return and financial statements**

- (1) Every registered charitable entity must ensure that, within 6 months after each balance date of the entity, an annual return that complies with subsection (2) is –
  - (a) completed in relation to the entity and that balance date; and
  - (b) dated and signed on behalf of the entity by 2 responsible persons of the entity; and
  - (c) sent or delivered to Te Kairēhita Aroha for registration.

- (2) The annual return of a registered charitable entity must –
  - (a) be in the form, contain the particulars, and comply with the directions as to the preparation of those returns that are prescribed by the Governor-General by Order in Council under section 158 (*Regulations*); and
  - (b) be accompanied by a copy of the financial statements of the registered charitable entity (or where a group has been recognised subject to a condition that each entity that forms part of the single entity must provide separate financial statements under section 81(2)(b) (*Te Kairēhita Aroha may recognise group on certain terms and conditions*), of each entity that forms part of the single entity) for the most recently completed accounting period.
- (3) The financial statements referred to in subsection (2)(b) must be prepared in accordance with, –
  - (a) in the case of financial statements of a specified not-for-profit entity, generally accepted accounting practice; or
  - (b) in any other case, either generally accepted accounting practice or a non-GAAP standard that applies for the purposes of this section.
- (4) If a registered charitable entity is subject to another Act that imposes duties relating to the preparation, audit, registration, or lodgement of financial statements, the entity must, in addition to complying with this Act, comply with the requirements of that other Act.

Compare: 2005 No 39, s 41(1)-(2) and s 42A(1) and (3); Exposure Draft Incorporated Societies Bill, clause 83

## **61 When financial statements must be audited or reviewed**

- (1) This section applies to –
  - (a) every registered charitable entity that is **large**; and
  - (b) every registered charitable entity that is of **medium size**.
- (2) Every registered charitable entity to which this section applies (**A**) must ensure that the financial statements of A that accompany an annual return under section 60 (*Duty to prepare annual return and financial statements*) are –
  - (a) audited by a qualified auditor if A is large in respect of the accounting period to which the financial statements relate:
  - (b) audited or reviewed by a qualified auditor if A is of medium size in respect of the accounting period to which the financial statements relate.
- (3) If financial statements are prepared on a consolidated basis in respect of a single entity under section 81(2)(a) (*Te Kairēhita Aroha may recognise group on certain terms and conditions*), –
  - (a) the parent entity must ensure that the financial statements of the single entity that accompany an annual return under section 60 (*Duty to prepare annual return and financial statements*) are –
    - (i) audited by a qualified auditor if the single entity is large in respect of the accounting period to which the financial statements relate:

- (ii) audited or reviewed by a qualified auditor if the single entity is of medium size in respect of the accounting period to which the financial statements relate; and
- (b) for the purposes of paragraph (a), the references to a registered charitable entity in subsection (1) and in sections 62(1) (*Meaning of large and medium size*) and 63 (*Audit or review must be carried out in accordance with auditing and assurance standards*) must be treated as references to the single entity.

Compare: 2005 No 39, s 42C

## **62 Meaning of large and medium size**

- (1) In section 61 (*When financial statements must be audited or review*) –
  - (a) a registered charitable entity is **large** in respect of an accounting period if, in each of the 2 preceding accounting periods of the entity, the total operating expenditure of the entity and all entities it controls (if any) is \$1 million or more;
  - (b) a registered charitable entity is of **medium size** in respect of an accounting period if,
    - (i) it is not large under paragraph (a); and
    - (ii) in each of the 2 preceding accounting periods of the entity, the total operating expenditure of the entity and all entities it controls (if any) is \$500,000 or more.
- (2) A financial reporting standard, or a part of such a standard, that is expressed as applying for the purposes of subsection (1)(a) or (b) must be applied in determining whether that provision applies (for example, the standard may define operating expenditure or control).

Compare: 2005 No 39, s 42C

## **63 Audit or review must be carried out in accordance with auditing and assurance standards**

- (1) An auditor must, in carrying out an audit or a review of the financial statements of a registered charitable entity, comply with all applicable auditing and assurance standards.
- (2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards.
- (3) This section does not apply in respect of a registered charitable entity that is a public entity (within the meaning of the Public Audit Act 2001).

Compare: 2005 No 39, s 42F

### *Duty to notify changes*

## **64 Duty to notify changes to Te Kairēhita Aroha**

- (1) Every registered charitable entity must ensure that it gives notice to Te Kairēhita Aroha of any of the following changes:
  - (a) a change to the rules of the registered charitable entity (including a copy of the amendment to the rules and a copy of the minute of the meeting or other record specifying the change and the effective date of the change):

- (b) a change to the name of the registered charitable entity;
  - (c) a change to the address for service of the registered charitable entity;
  - (d) the appointment of a new responsible person of the registered charitable entity (including a certification that the new responsible person is qualified to be a responsible person of a registered charitable entity);
  - (e) a responsible person of the registered charitable entity resigning or retiring as a responsible person of the entity, becoming disqualified from being a responsible person of a registered charitable entity, or otherwise ceasing to hold office;
  - (f) a change in the contact officer of the registered charitable entity;
  - (g) a change in the name or contact details of a contact officer of the registered charitable entity;
  - (h) a change in the balance date of the registered charitable entity.
- (2) A notice under subsection (1) must –
- (a) be in the prescribed form; and
  - (b) contain, or be accompanied by, any other prescribed information or documentation; and
  - (c) specify the effective date of the change; and
  - (d) be sent or delivered to Te Kairēhita Aroha within 20 working days of the later of–
    - (i) the effective date of the change; or
    - (ii) the registered charitable entity first becoming aware of the change.
- (3) This section does not apply if the change has been notified in an annual return sent or delivered under section 60 (*Duty to prepare annual return and financial statements*) before the change is required to be notified under subsection (2)(d).
- (4) This section does not affect the obligation of a registered charitable entity to notify any of the above changes under any other legislation.

Compare: 2005 No 39, s 40; SR 2006/301 r 6 (prior to its amendment in 2012)

#### *Duty of telephone and internet collectors*

### **65 Duty of telephone and internet collectors to disclose registration number on request**

If a collector who acts on behalf of a registered charitable entity is requesting funds, canvassing for subscriptions, selling raffle or lottery tickets, or appealing for donations, by means of the telephone or the internet, the collector must disclose the registration number of the entity if requested to do so by a member of the public.

Compare: 2005 No 39, s 39

#### *Duty regarding responsible persons*

### **66 Duty regarding responsible persons**

A registered charitable entity must:

- (a) take reasonable steps to ensure that each of its responsible persons is not disqualified from being a responsible person of a registered charitable entity under section 50 (*Qualifications of responsible persons of registered charitable entities*); and
- (b) after taking those steps:
  - (i) be, and remain, satisfied that each responsible person is not so disqualified; or
  - (ii) if it is unable to be, or remain, satisfied that a responsible person is not so disqualified, take reasonable steps to remove that person.

Compare: Australian Charities and Not-for-profits Commission Regulation 2013 (Cth) s 45.20(2)

### **Subpart 3 – Duties of responsible persons of registered charitable entities**

#### *Duty regarding conflicts of interest*

#### **67 Duty to disclose and manage conflicts of interest**

A responsible person of a registered charitable entity has a duty to disclose and manage perceived or actual material conflicts of interest of the person.

Compare: 2019 No 38 ss 28 and 34; 1993 No 105 ss 139-149; Exposure Draft Incorporated Societies Bill, clauses 56-65

### **Subpart 4 – Exemptions**

#### *Exemptions*

#### **68 Te Kairēhita Aroha may grant exemptions**

- (1) Te Kairēhita Aroha may, by written notice to an entity, exempt the entity from compliance with any provision or provisions of –
  - (a) section 53 (*Application for registration*);
  - (b) section 60 (*Duty to prepare annual return and financial statements*);
  - (c) section 61 (*When financial statements must be audited or reviewed*);
  - (d) section 64 (*Duty to notify changes to Te Kairēhita Aroha*);
  - (e) section 65 (*Duty of telephone and internet collectors to disclose registration number on request*);
  - (f) subpart 2 of Part 6 (*Recognition of group as single entity for purposes of registration*); or
  - (g) any regulations made under this Act.
- (2) The exemption may be granted on any terms and conditions that Te Kairēhita Aroha thinks fit.
- (3) Te Kairēhita Aroha may vary an exemption in the same way as an exemption may be granted under this section.
- (4) Te Kairēhita Aroha may, by written notice to an entity, revoke an exemption granted under this section.
- (5) In exercising powers under this section, Te Kairēhita Aroha must have regard to the purposes and principles of this Act.



- (6) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 2005 No 39, s 43

## **PART 6 – REGISTER OF CHARITIES**

### **Subpart 1 – Register of charities**

*Register continued*

#### **69 Register of charities**

- (1) The register of charities established by the Charities Act 2005 is continued.
- (2) The register must be an electronic register.
- (3) The register must be operated at all times unless –
  - (i) Te Kairēhita Aroha suspends the operation of the register, in whole or in part, in accordance with subsection (4); or
  - (ii) otherwise provided in regulations.
- (4) Te Kairēhita Aroha may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if Te Kairēhita Aroha considers that it is not practical to provide access to the register.

Compare: 2005 No 39 s 21; Exposure Draft Incorporated Societies Bill clause 170

#### **70 Purpose of register**

The purpose of the register is to –

- (a) provide a forum for accountability, to help registered charitable entities, both individually and collectively, demonstrate to their stakeholders and the public generally that they are worthy of support;
- (b) enable a member of the public to –
  - (i) determine whether an entity is registered under this Act; and
  - (ii) obtain information concerning the nature, activities, and purposes of registered charitable entities; and
  - (iii) know how to contact a registered charitable entity; and
- (c) facilitate research into the charitable sector; and
- (d) assist any person in the exercise of the person's powers or in the performance of the person's functions under this Act or any other enactment.

Compare: 2005 No 39 s 22; Exposure Draft Incorporated Societies Bill clause 171

#### **71 Te Kairēhita Aroha is registrar**

- (1) Te Kairēhita Aroha holds the office of registrar of the register of charities.
- (2) Te Kairēhita Aroha must ensure that the register is compiled and maintained.

Compare: 2005 No 39 s 23

## **72 Contents of register**

- (1) The register must contain the following information and documents for each registered charitable entity:
  - (a) the name of the entity;
  - (b) the address for service of the entity;
  - (c) the registration number of the entity;
  - (d) the names of the responsible persons of the entity and of all persons who have been responsible persons of the entity since the entity was first registered under this Act;
  - (e) contact details of the contact officer of the entity;
  - (f) a copy of the rules of the entity, and of all amendments to the entity's rules since the entity was first registered under this Act;
  - (g) the application for registration of the entity under this Act (including all required accompanying information and documents);
  - (h) whether the entity identifies as a kaupapa Māori charity;
  - (i) a link to the website of the registered charitable entity (if applicable);
  - (j) the financial statements and annual returns sent or delivered to Te Kairēhita Aroha by the entity;
  - (k) each notice of change sent or delivered under section 64 (*Duty to notify changes to Te Kairēhita Aroha*);
  - (l) the terms and conditions of any exemption granted under subpart 4 of Part 5 (*Exemptions*) that is in force in relation to the entity;
  - (m) the reason for any deregistration of the entity;
  - (n) whether the entity has appealed or is appealing any decision under this Act;
  - (o) any Court orders, including interim orders, made in respect of the entity under this Act; and
  - (p) details of any enforcement action taken against the entity under this Act.
- (2) The register must contain any other information or documents prescribed by regulations.
- (3) This section is subject to section 73 (*Te Kairēhita Aroha may remove or omit information and may restrict public access*).

Compare: 2005 No 39 s24; Exposure Draft Incorporated Societies Bill clause 172

## **73 Te Kairēhita Aroha may remove or omit information and may restrict public access**

- (1) Subject to this section, Te Kairēhita Aroha may, on request from an entity or of its own motion, remove or omit information from the register, or restrict or prevent public access to information on the register, in any of the following circumstances:
  - (a) the information:
    - (i) is commercially sensitive; and

- (ii) has the potential to cause detriment to the registered charitable entity (or former registered charitable entity) to which it relates, or to an individual;
  - (b) the information is inaccurate, is likely to cause confusion or is likely to mislead the public;
  - (c) the information is likely to offend a reasonable individual;
  - (d) the information could endanger public safety;
  - (e) in the case of information regarding any enforcement action taken against the entity, the information has been on the register for more than 5 years;
  - (f) for any other reason, Te Kairēhita Aroha considers, having regard to the purpose and principles of this Act, that the public interest requires that information to be removed or omitted, or public access to that information to be prevented or restricted.
- (2) For the purposes of subsection (1), Te Kairēhita Aroha may prevent or restrict access subject to any terms and conditions that it thinks fit.
  - (3) Te Kairēhita Aroha may not act under subsection (1) if the public interest in including the information on the register outweighs the likely adverse effect of the relevant circumstance.
  - (4) This section does not limit the Official Information Act 1982.

Compare: Australian Charities and Not-for-profits Commission Act 2012 s 40-10(2) and (3); 2005 No 39 s 25; Exposure Draft Incorporated Societies Bill clause 173

## **74 Amendments to register**

Te Kairēhita Aroha may, at any time, make any amendments to the register that are necessary –

- (a) to reflect any changes in the information that relates to a registered charitable entity; or
- (b) to rectify or correct the register if any information has been –
  - (i) wrongly entered in, or omitted from, the register; or
  - (ii) incorrectly entered in the register; or
- (c) for the purposes of section 73 (*Te Kairēhita Aroha may remove or omit information and may restrict public access*); or
- (d) to comply with any court order.

Compare: 2005 No 39 s 26; Exposure Draft Incorporated Societies Bill clauses 173 and 174

## **75 Registration of documents or other information**

Neither registration nor refusal of registration of a document or other information by Te Kairēhita Aroha affects, or creates a presumption as to, the validity or invalidity of the document or information or the correctness or otherwise of any information (unless this Act otherwise provides).

Compare: Exposure Draft Incorporated Societies Bill clause 175

## *Searches of register*

### **76 Search of register**

- (1) A person may search the register in accordance with this Act or regulations.
- (2) The register may be searched only by reference to the following criteria:
  - (a) the name of the registered charitable entity;
  - (b) any former name of the registered charitable entity;
  - (c) the registration number of the registered charitable entity;
  - (d) the address for service or any former address for service of the registered charitable entity;
  - (e) the name of a responsible person of the registered charitable entity (for example, a surname, family name, first name, given name, or body corporate name);
  - (f) the name of a former responsible person of the registered charitable entity;
  - (g) the sector in which the registered charitable entity operates;
  - (h) the activities that the registered charitable entity undertakes;
  - (i) the beneficiaries of the registered charitable entity;
  - (j) the area of operation of the registered charitable entity;
  - (k) any other criteria prescribed by regulations.

Compare: 2005 No 39, s 27; SR 2006/301 r 8; Exposure Draft Incorporated Societies Bill clause 176

### **77 Search purposes**

A search of the register may be carried out only by the following persons for the following purposes:

- (a) a person for the purpose of determining whether an entity is registered under this Act;
- (b) a person for the purpose of obtaining information concerning the nature, activities, and purposes of a registered charitable entity, including whether the registered charitable entity identifies as a kaupapa Māori charity;
- (c) a person for the purpose of knowing how to contact a registered charitable entity;
- (d) an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual;
- (e) a person for the purpose of assisting the person in the exercise of the person's powers or the performance of the person's functions under this Act or any other enactment.

Compare: 2005 No 39, s 28; Exposure Draft Incorporated Societies Bill clause 177

### **78 When search constitutes an interference with privacy of an individual**

A search of the register for personal information that has not been carried out in accordance with sections 76 (*Search of register*) and 77 (*Search purposes*)

constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

Compare: 2005 No 39, s 29; Exposure Draft Incorporated Societies Bill clause 178

## **Subpart 2 – Recognition of group as single entity for purposes of registration**

### **79 Te Kairēhita Aroha may recognise a group for purposes of registration**

- (1) Te Kairēhita Aroha may, on the request of an entity, recognise a group for the purposes of any or all of the provisions of this Act by treating the entity (the **parent entity**) and 1 or more other entities as forming part of a single entity (the **single entity**). Te Kairēhita Aroha may only recognise a group for the purposes of this Act if the following conditions are met:
  - (a) the other entity, or those other entities, are affiliated or closely related to the parent entity;
  - (b) each of the entities qualifies for registration under this Act; and
  - (c) it is fit and proper to treat the entities as forming part of a single entity.
- (2) In assessing the requirements of subsection (1), Te Kairēhita Aroha must have regard to the extent to which the entities have similar charitable purposes.
- (3) A request made under this section must be in the prescribed form.

Compare: 2005 No 39, s 44

### **80 Parent entity may request means of compliance with duties**

- (1) A parent entity, on behalf of a single entity, may request, -
  - (a) in relation to section 60 (*Duty to prepare annual return and financial statements*), that the duty under that section be either –
    - (i) separately complied with by each entity that forms part of the single entity; or
    - (ii) complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity;
  - (b) in relation to section 64 (*Duty to notify changes to Te Kairēhita Aroha*), that the duty under that section be either –
    - (i) separately complied with by each entity that forms part of the single entity; or
    - (ii) complied with by the parent entity in relation to the single entity on behalf of the single entity and all of the entities that form part of the single entity.
- (2) A request made under this section must be in the prescribed form.
- (3) Te Kairēhita Aroha must have regard to a request made under this section when it is setting terms and conditions under section 81 (*Te Kairēhita Aroha may recognise group on certain terms and conditions*).

Compare: 2005 No 39, s 45

## **81 Te Kairēhita Aroha may recognise group on certain terms and conditions**

- (1) Te Kairēhita Aroha may treat the parent entity and 1 or more other entities as forming part of the single entity on any terms and conditions that Te Kairēhita Aroha thinks fit, including terms and conditions relating to –
  - (a) the manner in which the single entity may apply for recognition as a group for the purposes of this Act;
  - (b) the name that must be treated as being the name of the single entity for the purposes of this Act;
  - (c) who must be treated as being the responsible persons of the single entity for the purposes of this Act;
  - (d) the rules that must be treated as being the rules of the single entity for the purposes of this Act; and
  - (e) the manner in which the duties or obligations imposed under this Act on registered charitable entities are to be complied with on behalf of the single entity and the entities that form part of that single entity; and
  - (f) the information and documents that must be included in the register in relation to the single entity and the entities that form part of that single entity; and
  - (g) the manner in which rights or powers conferred under this Act on a registered charitable entity may be exercised by the single entity.
- (2) If the duty under section 60 (*Duty to prepare annual return and financial statements*) is to be complied with by the parent entity in relation to the single entity, the terms and conditions under subsection (1) may provide that the financial statements that must accompany an annual return that is sent or delivered by the parent entity are prepared –
  - (a) on a consolidated basis in respect of the single entity; or
  - (b) separately in respect of each entity that forms part of the single entity.
- (3) In deciding whether subsection (2)(a) or (b) applies, Te Kairēhita Aroha must take into account –
  - (a) the needs of users of the financial statements; and
  - (b) the purposes and principles of this Act.
- (4) If the terms and conditions referred to in subsection (2) relate to the financial statements of an entity, those terms and conditions must be treated as including a requirement for the financial statements to disclose, in the statement of accounting policies section, a brief description of the terms and conditions that apply under subsection (2).
- (5) Te Kairēhita Aroha must give written notice to the parent entity of any terms and conditions that apply under this section.
- (6) Te Kairēhita Aroha may vary those terms and conditions by written notice to the parent entity.
- (7) If those terms and conditions provide that the duty under –

- (a) section 60 (*Duty to prepare annual return and financial statements*) must be complied with by the parent entity in relation to the single entity, on behalf of the single entity and all of the entities that form part of the single entity, the entities that form part of the single entity are not required to separately comply with that section (but see subsection (2)):
  - (b) section 64 (*Duty to notify changes to Te Kairēhita Aroha*) must be complied with by the parent entity in relation to the single entity, on behalf of the single entity and all of the entities that form part of the single entity, the entities that form part of the single entity are not required to separately comply with that section.
- (8) For the purposes of this Act, the single entity must be treated as –
- (a) having the name, responsible persons, and rules referred to in subsection (1)(b) to (d); and
  - (b) being qualified for recognition as a group under this Act if all of the entities that form part of the single entity are qualified for registration under this Act.
- (9) This section is subject to section 80 (*Parent entity may request means of compliance with duties*).

Compare: 2005 No 39, s 46

## **82 Effect of recognition of group**

If a single entity is recognised as a group under this Act then, unless the terms and conditions referred to in section 81 (*Te Kairēhita Aroha may recognise group on certain terms and conditions*) otherwise provide, –

- (a) each entity that forms part of the single entity under section 79(1) (*Te Kairēhita Aroha may treat entity and affiliated or closely related entities as single entity*) must be treated as being registered under this Act for the purposes of the provisions of –
  - (i) this Act (including section 147 (*No holding out unless registered under this Act*)); and
  - (ii) the Inland Revenue Acts; and
- (b) the register –
  - (i) must contain the information and documents referred to in section 72 (*Contents of register*) in relation to the single entity; and
  - (ii) is not required to separately contain the information and documents referred to in that section in relation to the entities that form part of the single entity.

Compare: 2005 No 39, s 47

## **83 Te Kairēhita Aroha may revoke entity's status as forming part of single entity**

- (1) Te Kairēhita Aroha may revoke an entity's status as forming part of a single entity if –
- (a) the entity is no longer affiliated or closely related to the parent entity; or
  - (b) the entity ceases to be registered under this Act; or

- (c) it is no longer fit and proper to treat the entity as forming part of the single entity; or
  - (d) the entity has failed to comply with a term or condition referred to in section 81 (*Te Kairēhita Aroha may recognise group on certain terms and conditions*); or
  - (e) the parent entity has sent or delivered to Te Kairēhita Aroha a request for Te Kairēhita Aroha to revoke the entity's status as forming part of the single entity.
- (2) An entity's status as forming part of a single entity is revoked if Te Kairēhita Aroha register a notice in the register that –
- (a) states that the entity's status as forming part of the single entity is revoked; and
  - (b) states the date on which the revocation is effective.
- (3) On the date referred in subsection (2)(b), the entity ceases to be treated as part of the single entity subpart 2 (*Recognition of group as single entity for purposes of registration*).
- (4) Before revoking an entity's status as forming part of a single entity, Te Kairēhita Aroha must –
- (a) give the entity whose status is proposed to be revoked and the parent entity a reasonable opportunity to make submissions to Te Kairēhita Aroha on the matter; and
  - (b) notify the entity of its right to request an oral hearing before a hearing authority.

Compare: 2005 No 39, s 48 and s 49

## **PART 7 – BINDING RULINGS**

### **84 Purpose**

The purpose of this Part is to provide registered charitable entities with certainty about whether they are able to undertake certain activities under this Act, by enabling Te Kairēhita Aroha to issue rulings that will bind Te Kairēhita Aroha.

Compare: 1994 No 166 s 91A

### **85 Te Kairēhita Aroha may make rulings**

- (1) Te Kairēhita Aroha may make a ruling on how this Act applies, or would apply, to a person in relation to their particular circumstances.
- (2) Te Kairēhita Aroha may decline to make a ruling under this section if it is considered that the question asked, because of its nature or in the circumstances set out in the application, make it inappropriate for a ruling under this section to be made, for example, when –
  - (a) an application fails to provide sufficient information:
  - (b) an application raises a question that is better answered through another process:



- (c) an issue raised in the application is subject to appeal, whether in relation to the applicant or any other person.
- (3) Te Kairēhita Aroha may not make a ruling under this section if –
  - (a) the applicant is not seriously contemplating the activities in respect of which the ruling is sought; or
  - (b) the application is frivolous or vexatious; or
  - (c) a ruling under this section already exists on how this Act applies to the applicant; or
  - (d) Te Kairēhita Aroha is inquiring into how this Act applies to the applicant and the activities in question; or
  - (e) the applicant has not provided sufficient information in relation to the application after Te Kairēhita Aroha has requested further information; or
  - (f) it would be unreasonable to make a ruling in view of the resources available to Te Kairēhita Aroha; or
  - (g) the application for the ruling would require Te Kairēhita Aroha to form an opinion as to a generally accepted accounting practice.

Compare: 1994 No 166 ss 91E, 91GB and 91EK

## **86 Applying for ruling**

- (1) A person, in their own right or on behalf of a person who is yet to come into legal existence, may apply to Te Kairēhita Aroha for a ruling on how this Act applies, or would apply, to the person making the application or the prospective person, as the case may be, in relation to a particular set of circumstances.
- (2) Two or more persons may apply jointly for a ruling under subsection (1).
- (3) The application must –
  - (a) be in the prescribed form; and
  - (b) meet the requirements of section 89 (*Disclosure requirements*).
- (4) The person may withdraw the application at any time by notifying Te Kairēhita Aroha.

Compare: 1994 No 166 s 91EC and 91EL

## **87 Effect of ruling**

- (1) This section applies, despite anything in another Act, when –
  - (a) a ruling under section 85 (*Te Kairēhita Aroha may make rulings*) applies to a person in relation to a particular set of circumstances; and
  - (b) the person applies the law in the way stated in the ruling.
- (2) Te Kairēhita Aroha must apply this Act in relation to the person and the particular circumstances in accordance with the ruling.

Compare: 1994 No 166 s 91EA and 91EM

## **88 Application of ruling**

- (1) A ruling under section 85 (*Te Kairēhita Aroha may make rulings*) applies to a person in relation to a particular set of circumstances only for –
  - (a) the provisions expressly referred to in the ruling; and
  - (b) the period for which the ruling applies.
- (2) A ruling under section 85 (*Te Kairēhita Aroha may make rulings*) does not apply to a person in relation to the particular circumstances to the extent to which –
  - (a) the circumstances are materially different to the circumstances described in the ruling; or
  - (b) a material omission or misrepresentation was made in connection with the application for the ruling; or
  - (c) the ruling is based on an express understanding about a future event or other matter, and the understanding subsequently proves to be materially incorrect; or
  - (d) Te Kairēhita Aroha stipulates a condition that is not met.

Compare: 1994 No 166 s 91EB and 91EN

## **89 Disclosure requirements**

An application for a ruling under section 85 (*Te Kairēhita Aroha may make rulings*) must –

- (a) identify the person applying for the ruling; and
- (b) describe the circumstances on which the ruling is sought; and
- (c) disclose all relevant facts and documents relating to the circumstances described; and
- (d) state the general outcome in relation to which the ruling is sought.

Compare: 1994 No 166 s 91ED and 91EO

## **90 Te Kairēhita Aroha may request further information**

Te Kairēhita Aroha may at any time request further relevant information from a person applying for a ruling under section 85 (*Te Kairēhita Aroha may make rulings*).

Compare: 1994 No 166 ss 91EE, 91GD and 91EP

## **91 Conditions on which ruling based**

If Te Kairēhita Aroha considers that the correctness of a ruling under section 85 (*Te Kairēhita Aroha may make rulings*) would depend on conditions stipulated about a future event or other matter, Te Kairēhita Aroha may –

- (a) state the conditions on which Te Kairēhita Aroha bases the ruling; or
- (b) decline to make the ruling.

Compare: 1994 No 166 s 91EF and 91EQ

## **92 Right to consultation**

Before Te Kairēhita Aroha makes a ruling under section 85 (*Te Kairēhita Aroha may make rulings*), Te Kairēhita Aroha must give the person applying for the ruling a reasonable opportunity to be consulted if the content of the proposed ruling differs from that for which the application is made.

Compare: 1994 No 166 ss 91EG, 91GE and 91ER

## **93 Content and notification of ruling**

- (1) A ruling under section 85 (*Te Kairēhita Aroha may make rulings*) must state –
  - (a) that it is a ruling made under section 85 (*Te Kairēhita Aroha may make rulings*); and
  - (b) the identity of the person and the particular set of circumstances to which the ruling applies; and
  - (c) how this Act applies to the person and the circumstances; and
  - (d) the period for which the ruling applies; and
  - (e) any conditions stipulated by Te Kairēhita Aroha.

Anything that does not contain these statements is not a ruling under section 85.

- (2) Te Kairēhita Aroha shall notify the making of a ruling under section 85 by sending a copy of the ruling to the person or persons who applied for it.

Compare: 1994 No 166 s 91EH and 91ES

## **94 Withdrawal of a ruling**

- (1) Te Kairēhita Aroha may at any time withdraw a ruling made under section 85 (*Te Kairēhita Aroha may make rulings*) by notifying the person to whom the ruling applies that the ruling has been withdrawn.
- (2) The ruling is withdrawn from the date stated in the notice of withdrawal. That date may not be earlier than the date on which the person could reasonably be expected to receive the notice of withdrawal.
- (3) If Te Kairēhita Aroha withdraws a ruling made under section 85 (*Te Kairēhita Aroha may make rulings*) in relation to a particular set of circumstances –
  - (a) the ruling does not apply if the person entered into the particular set of circumstances after the date of withdrawal; but
  - (b) the ruling continues to apply, for the remainder of the period stated in the ruling, if the person entered into the particular set of circumstances before the date of withdrawal.

Compare: 1994 No 166 s 91EI and 91ESB

## **95 Treatment of information**

- (1) Information supplied to Te Kairēhita Aroha by the applicant for a ruling under section 85 (*Te Kairēhita Aroha may make rulings*) is the factual basis on which Te Kairēhita Aroha makes the ruling.
- (2) Despite subsection (1), Te Kairēhita Aroha –

- (a) may, as part of the process of making the ruling, inquire into the correctness or existence of the facts contained in the information supplied before making the ruling;
- (b) is not stopped by the process of making the ruling or by the use of the information as the basis of the ruling from denying, outside the process of making the ruling or subsequent to making the ruling, the correctness or existence of the facts contained in the information supplied.

Compare: 1994 No 166 s 91EJ and 91ETT

## **PART 8 – MONITORING**

### **96 Purpose**

The purpose of this Part is to set out the framework by which Te Kairēhita Aroha monitors registered charitable entities to ensure that:

- (a) the activities and proposed activities of the registered charitable entity are being carried out in the best interests of the entity's stated charitable purposes, and otherwise in accordance with the entity's rules and in accordance with this Act; and
- (b) the entity, or any person in connection with the entity, is not engaging in activities that constitute serious wrongdoing under this Act.

### *Inquiries and reports*

### **97 Inquiries and additional reports**

- (1) Te Kairēhita Aroha or a person authorised by Te Kairēhita Aroha may exercise one or more of the powers referred to in subsection (2) -
  - (a) for the purpose of -
    - (i) ascertaining whether a registered charitable entity or a responsible person of a registered charitable entity is complying, or has complied, with this Act;
    - (ii) ascertaining whether Te Kairēhita Aroha should exercise any of its rights or powers under this Act; or
    - (iii) detecting offences against this Act; and
  - (b) if, in Te Kairēhita Aroha's opinion, it is in the public interest to do so.
- (2) The powers are to:
  - (a) examine and inquire into -
    - (i) any registered charitable entity;
    - (ii) any person who has engaged in, or is engaging in, conduct that constitutes or may constitute -
      - (A) a breach of this Act; or
      - (B) serious wrongdoing in connection with a registered charitable entity;
  - (b) subject to subsection (3), require a person, by notice in writing, to give to Te Kairēhita Aroha, within the period and in the manner and form specified in

the notice, any information or document, or class of information or document, specified in the notice:

- (c) require a particular registered charitable entity, by written notification to:
  - (i) prepare a report, in addition to any other statement or report the registered charitable entity is required to prepare; and
  - (ii) give that report to Te Kairēhita Aroha within the period specified in the notification.
- (3) Persons to whom this section applies have the same privileges in relation to supplying information and documents to Te Kairēhita Aroha as witnesses have in proceedings before a Court.

Compare: 2005 No 39, ss 50 and 51; Exposure Draft Incorporated Societies Bill clause 182; Australian Charities and Not-for-Profits Commission Act 2012 s 60-75(1)(a)

## **98 No obligation to supervise**

This Act does not impose on Te Kairēhita Aroha or any other person any duty or obligation –

- (a) to supervise the affairs of any person; or
- (b) to apply or operate any system of supervision of any class of person or of charities generally; or
- (c) to exercise any powers conferred by this Act in respect of any particular person.

Compare: 2005 No 39 s 75

## **99 Te Kairēhita Aroha may supply inquiry information or documents**

- (1) Te Kairēhita Aroha may supply any information or documents that it obtains under section 97 (*Inquiries and additional reports*) to any person for either or both of the following purposes:
  - (a) assisting the person in the exercise of the person's powers or in the performance of the person's functions under this Act;
  - (b) detecting and prosecuting offences against any other Act, but, in this case, that information and those documents are not admissible in any criminal proceedings against the person from whom the information or documents were acquired or any person to whom the information or documents relate.
- (2) Any person may use and disclose any information or documents supplied to the person by Te Kairēhita Aroha under this section for the purposes referred to in subsection (1).
- (3) This section does not limit sections 76 to 78 (*Searches of register*).

Compare: 2005 No 39, s 53

### *Compliance agreements*

## **100 Te Kairēhita Aroha may enter into compliance agreements**

If Te Kairēhita Aroha considers that a registered charitable entity may have breached or may be at risk of breaching this Act, Te Kairēhita Aroha may, in

consultation with the entity, draw up an action plan setting out the measures the entity needs to take to ensure it is meeting its compliance obligations.

#### *Enforceable undertakings*

### **101 Te Kairēhita Aroha may accept enforceable undertakings**

- (1) Te Kairēhita Aroha may accept a written undertaking given by a registered charitable entity that the entity will take, or refrain from taking, specified action.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The entity may, with the prior written consent of Te Kairēhita Aroha, withdraw or vary the undertaking at any time.
- (4) If the entity breaches the undertaking, Te Kairēhita Aroha may apply to a hearing authority for any or all of the following orders:
  - (i) an order directing the entity to comply with the undertaking;
  - (ii) an order directing the entity to remedy the breach;
  - (iii) any other order the hearing authority considers appropriate.

Compare: Australian Charities and Not-for-Profits Commission Act 2012 Division 90

#### *Injunctions*

### **102 Grant of injunctions**

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of this Act, a hearing authority may, on application by Te Kairēhita Aroha, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the hearing authority's opinion, it is desirable to do so, requiring the person to do a thing.
- (2) If a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing that would contravene this Act, a hearing authority may, on application by Te Kairēhita Aroha, grant an injunction requiring the person to do that thing.
- (3) In exercising the powers conferred on a hearing authority under this section, the hearing authority must take into account the purposes and principles of this Act.

Compare: Australian Charities and Not-for-Profits Commission Act 2012 Division 95

## **PART 9 – REMOVAL FROM REGISTER**

#### *Deregistration*

### **103 Purpose of this Part**

The purpose of this Part is provide for the circumstances in which a registered charitable entity may be removed from the register. Other than in the circumstances of voluntary deregistration, the power to deregister is discretionary, and is intended to be used only in extreme circumstances, taking into account the purposes and principles of this Act.

### **104 Deregistration of registered charitable entity**

- (1) An entity is deregistered under this Act if it is removed from the register.

- (2) An entity is removed from the register when Te Kairēhita Aroha registers a notice in the register that states –
- (a) that the entity is removed from the register;
  - (b) the grounds under which the entity is removed from the register; and
  - (c) the date on which the removal is effective.
- (3) Subject to section 32 (*Appeals*), the entity ceases to be a registered charitable entity on the date referred to in subsection (2)(c).

Compare: 2005 No 39, s 31(1)-(3); Exposure Draft Incorporated Societies Bill clause 128

## **105 Grounds for removal from register**

- (1) Te Kairēhita Aroha may remove an entity from the register if, -
- (a) the entity has sent or delivered to Te Kairēhita Aroha a request to be removed from the register, which request must be made in the prescribed manner (if any);
  - (b) the entity is carrying out activities that are not consistent with or supportive of its stated charitable purposes;
  - (c) the entity is carrying out activities that are not otherwise in accordance with its rules;
  - (d) the entity engages in activities, such as hate speech or partisan political activity, that are proscribed by section 18 (*Activities*);
  - (e) subject to section 48(2)-(4) (*binding rulings*), the entity makes an amendment to its rules that results in its purposes no longer being exclusively charitable;
  - (f) the entity does not meet the eligibility requirements for registration set out in section 48(d) to (f), (4) or (5) (*Eligibility for registration*);
  - (g) the entity has engaged or is engaging in serious wrongdoing;
  - (h) a person has engaged or is engaging in serious wrongdoing in connection with the entity and the entity has not taken appropriate corrective action;
  - (i) there has otherwise been a significant or persistent failure by the entity to comply with its duties under subpart 2 of Part 5 (*Duties of registered charitable entities*), or to otherwise meet its obligations under this Act or any other enactment; or
  - (j) there has been a significant or persistent failure by any 1 or more collectors who act on behalf of the entity to meet their obligations under this Act.
- (2) Te Kairēhita Aroha may choose not to proceed with the removal of a registered charitable entity from the register despite subsection (1)(b) to (j) applying.
- (3) Te Kairēhita Aroha may remove a registered charitable entity from the register under subsection (1)(b) to (i) only if –
- (a) Te Kairēhita Aroha has complied with section 106 (*Notice of intention to remove*); and
  - (b) Te Kairēhita Aroha –

- (i) is satisfied that no person has objected to the removal under section 107 (*Objection to removal from register*); or
- (ii) if an objection to the removal has been received, has complied with section 108 (*Duties of Te Kairēhita Aroha if objection received*).

Compare: 2005 No 39, s 32; 1993 No 105, s 318(1), (1A), (4A); Exposure Draft Incorporated Societies Bill clause 129

#### *Procedural requirements before deregistration*

### **106 Notice of intention to remove from register**

- (1) Before a registered charitable entity can be removed from the register under section 105 (*Grounds for removal from register*), Te Kairēhita Aroha must –
  - (a) give notice to the registered charitable entity in accordance with subsection (2); and
  - (b) give public notice of the matters set out in subsection (3).
- (2) The notice to be given under subsection (1)(a) must specify:
  - (a) the name of the entity; and
  - (b) the registration number of the entity; and
  - (c) the provision of this Act under, and the grounds on, which it is intended to remove the registered charitable entity from the register; and
  - (d) must include the following information in respect of the relevant grounds:
    - (i) if section 105(1)(b) to (i) applies, that the registered charitable entity will be removed from the register unless –
      - (A) Te Kairēhita Aroha does not, in accordance with section 105(2) (*Grounds for removal from register*), proceed to remove the registered charitable entity from the register; or
      - (B) by the date specified in the notice, which must be at least 20 working days from the date of the notice, the registered charitable entity (by notice in writing) provides sufficient information to demonstrate that the relevant grounds are not made out and that there is a proper reason for the registered charitable entity to remain registered:
    - (ii) if section 105(1)(a) applies, the date from which the removal will be effective, which date must be at least 20 working days from the date of the notice.
- (3) The notice to be given under subsection (1)(b) must specify –
  - (a) the name of the registered charitable entity; and
  - (b) the registration number of the entity; and
  - (b) the provision of this Act under, and the grounds on, which it is intended to remove the registered charitable entity from the register; and
  - (c) the date by which an objection to the removal under section 107 (*Objection to removal from register*) must be received by Te Kairēhita Aroha, which must be not less than 20 working days after the date of the notice.



### **107 Objection to removal from register**

If a notice is given under section 106 (*Notice of intention to remove from register*), any person may deliver to Te Kairēhita Aroha, not later than the date specified in the notice, an objection to the removal on any 1 or more of the following grounds:

- (a) that the grounds on which it is intended to remove the entity from the register have not been satisfied;
- (b) that, for any other reason, it would not be in the public interest to remove the entity from the register.

Compare: 2005 No 39, s 34

### **108 Duties of Te Kairēhita Aroha if objection received**

If an objection to the removal of an entity from the register under section 107 (*Objection to removal from register*) is received on or before the date referred to in section 106(3)(c) (*Notice of intention to remove from register*), Te Kairēhita Aroha must consider the objection and give each objector a reasonable opportunity to make submissions on the matter. Te Kairēhita Aroha must not proceed with the removal unless:

- (a) all of the objections have been considered; and
- (b) 1 or more of the grounds for removal from the register are satisfied; and
- (c) having regard to the purpose and principles of this Act, it is in the public interest to proceed with the removal.

Compare: 2005 No 39, s 35(1) and s 36(1)(b)

### **109 Notice of deregistration**

- (1) If, having considered any objections received under sections 107 (*Objection to removal from register*) and 108 (*Duties of Te Kairēhita Aroha if objection received*), Te Kairēhita Aroha decides to proceed with the removal of the entity from the register,–
  - (a) Te Kairēhita Aroha must give to the registered charitable entity–
    - (i) notice of the decision and the reasons for it; and
    - (ii) notice of the entity's right to appeal the decision to a hearing authority under section 32 (*Appeals*); and
  - (b) Te Kairēhita Aroha must give to any other person who gives a notice objecting to the removal on a ground specified in section 107(b) (*Objection to removal from register*), notice of their right to apply to a hearing authority for an order that the registered charitable entity not be removed from the register.
- (2) Te Kairēhita Aroha must not proceed to remove the entity from the register earlier than 60 working days after the date on which the notice referred to in subsection (1) are given to the recipient.
- (3) The hearing authority may make an order that the entity should not be removed from the register if:

- (a) none of the grounds in section 105 (*Grounds for removal from register*) are made out; or
- (b) having regard to the purpose and principles of this Act, it is not in the public interest to proceed with the removal.

Compare: 2005 No 39, s 35(2); Exposure Draft Incorporated Societies Bill clause 135

## **PART 10 – CHARITIES REVIEW AUTHORITIES**

### **110 Purpose**

The purpose of this Part is to establish a low cost, more informal Tribunal with relaxed rules of evidence to improve charities' access to justice.

### **111 Establishment of Charities Review Authorities**

- (1) There shall be established 1 or more Charities Review Authorities.
- (2) If more than 1, any Authority may be given such distinctive designation as the Governor-General determines, and any such designation may from time to time be changed by the Governor-General.
- (3) Every Authority shall consist of one person, being a District Court Judge, or a barrister or solicitor of the High Court of not less than 7 years' practice, with specialist expertise in the law of charities of Aotearoa New Zealand.
- (4) Every Authority shall be appointed by the Governor-General on the recommendation of the Minister of Justice.
- (5) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of the person being an Authority.

### **112 Appointment of temporary acting Authority**

- (1) If an Authority becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if an Authority considers it is not proper or not desirable that they should adjudicate on a specified matter, the Governor-General, on the recommendation of the Minister of Justice, may appoint a suitable person as an acting Authority for the period or purpose stated in the appointment.
- (2) No person may be appointed as an acting Authority unless they are eligible for appointment as an Authority.
- (3) An acting Authority is, while acting in that position, to be treated as an Authority.
- (4) No appointment of an acting Authority and no act done by an acting Authority may be questioned in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

Compare 1994 No 165 s 5A

### **113 Term of office of an Authority**

- (1) Except as otherwise provided in this Act, every person appointed as an Authority must be appointed for a term of up to 5 years, as the Governor-General thinks fit, and may from time to time be reappointed.
- (2) Any person appointed as an Authority may, with the approval of the Governor-General, hold that office concurrently with any other office held by them.

- (3) Where the term for an Authority expires, the Authority, unless sooner vacating or removed from office under section 114 (*Vacation of office by Authority*), continues to hold office, by virtue of the appointment for the term that has expired, until –
- (a) the Authority is reappointed; or
  - (b) a successor to the Authority is appointed.
- (4) An Authority who continues in office for any period under subsection (3), unless they were removed from office, may act as an Authority during that period for the purpose of –
- (a) completing any proceedings partly or wholly heard by the Authority before the expiry of their term of office:
  - (b) hearing any other proceedings:
  - (c) stating a case for the High Court from a decision given by the Authority.

Compare 1994 No 165 s 6; 1993 No 82, s 100

#### **114 Vacation of office by Authority**

- (1) An Authority may at any time resign their office by delivering a notice in writing to that effect to the Minister of Justice.
- (2) An Authority shall be deemed to have vacated their office if they die or are adjudicated bankrupt.
- (3) An Authority may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

Compare 1993 No 82 s103

#### **115 Oath to be taken by an Authority**

Before entering upon the exercise of the duties of their office, every person appointed as an Authority shall take and subscribe an oath before a Judge of the High Court that the person will faithfully and impartially perform the duties of that office.

Compare 1994 No 165 s 7

#### **116 Remuneration and travelling expenses**

There shall be paid out of money appropriated by Parliament for the purpose to any person appointed as an Authority remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if that person were a statutory board within the meaning of that Act.

Compare 1994 No 165 s 8

#### **117 An Authority not personally liable**

No person appointed as an Authority shall be personally liable for any act done or omitted to be done by the person in good faith in pursuance or intended pursuance of the person's functions, duties, powers, or authorities as an Authority.

Compare 1994 No 165 s 9

### **118 Registrars and other offices of an Authority**

- (1) There shall from time to time be appointed under the State Sector Act 1988 such Registrars, Deputy Registrars, clerks, and other officers of an Authority as may be required, and one person may be appointed Registrar or Deputy Registrar or clerk or officer of 2 or more Authorities.
- (2) The office of Registrar or Deputy Registrar or any other office may be held either separately or in conjunction with any other office in the Public Service.

Compare 1994 No 165 s 11

#### *Functions and powers of Authorities*

### **119 Functions of Registrars and other offices of an Authority**

The functions of an Authority are to sit as a judicial authority to consider and adjudicate upon proceedings brought under:

- (a) this Act; and
- (b) any other Act which specifies that an appeal may be brought before a Charities Review Authority .

### **120 General jurisdiction of Authorities**

Every Authority established under section 111 (*Establishment of Charities Review Authorities*) has a general jurisdiction –

- (a) to hear and determine appeals against decisions of Te Kairēhita Aroha and other proceedings brought under this Act; and
- (b) to hear and determine any other proceedings that any other Act authorises the Authority to hear and determine.

### **121 Orderly and efficient operation**

- (1) An Authority is responsible for such arrangements as are practicable to ensure that they perform their functions –
  - (a) in an orderly and efficient manner; and
  - (b) consistently with the purposes and principles of this Act.
- (2) The Ministry of Justice must provide the resources and administrative support necessary to enable the Authorities to perform their functions.

Compare 1994 No 165 s 13AB

### **122 Seal**

Every Authority shall have a seal, which shall be judicially noticed in all courts and for all purposes.

### **123 An Authority to be a commission of inquiry**

- (2) Every Authority shall, within the scope of the Authority's jurisdiction, be deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908 and, subject to this Act and any regulations made under this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.
- (2) An Authority, or the Registrar or Deputy Registrar purporting to act by direction or with the authority of an Authority, may issue summonses requiring the attendance

of witnesses before the Authority or the production of any document, or may do any other act preliminary or incidental to the hearing of any matter by the Authority.

Compare 1994 No 165 s 15

#### *Proceedings before Authorities*

### **124 Hearing of proceedings**

- (1) The procedure for the institution, hearing, and determination of any proceedings before an Authority shall be in accordance with the provisions of this Act and with any regulations relating to those proceedings and, subject to those provisions and any practice notes issued under section 139 (*Practice notes*), an Authority may determine the Authority's own procedure.
- (2) For the purposes of hearing and determining an appeal against a decision of Te Kairāhita Aroha, an Authority shall have all the powers, duties, functions, and discretions of Te Kairāhita Aroha in making the determination.
- (3) In respect of any proceedings before an Authority –
  - (a) the parties shall each be entitled to appear personally or be represented by a barrister or solicitor of the High Court or by any other person:
  - (b) except as provided in section 135 (*Power to order costs in certain cases*) no costs shall be awarded to or against a party.

Compare 1994 No 165 s 16

### **125 Evidence in proceedings before an Authority**

- (1) An Authority may –
  - (a) call for evidence and information from the parties or any other person:
  - (b) request or require the parties or any other person to attend the proceedings to give evidence:
  - (c) fully examine any witness:
  - (d) receive as evidence any statement, document, information, or matter that in the opinion of the Authority may assist the Authority to deal effectually with the proceedings before the Authority, whether or not the same would be otherwise admissible in a court of law.
- (2) The Authority may take evidence on oath, and for that purpose any officer of the Authority may administer an oath.
- (3) The Authority may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Authority thinks fit, verifying it by oath.
- (4) Subject to subsections (1) to (3), the Evidence Act 2006 shall apply to an Authority and to all proceedings before an Authority, as if an Authority were a court within the meaning of that Act.
- (5) Witnesses and counsel appearing before the Authority shall have the same privileges and immunities as witnesses and counsel have in proceedings in the District Court.

Compare 1994 No 165 s 17

## **126 Sittings of an Authority**

- (1) Sittings of an Authority shall be held at such times and places as the Authority from time to time appoints.
- (2) An Authority may adjourn any sitting from time to time or place to place either before the time of the sitting or at the sitting.
- (3) During the absence of the Authority or the Authority's inability to act, from any cause, the Registrar to the Authority or, where the Registrar is also absent or unable to act from any cause, the Deputy Registrar to the Authority, shall have the same powers as the Authority to adjourn a sitting.

Compare 1994 No 165 s 19

## **127 Sittings to be held in public except in special circumstances**

- (1) Except as provided by subsections (2) and (3), every hearing of an Authority shall be held in public.
- (2) Where an Authority is satisfied that it is desirable to do so, the Authority may, of its own motion or on the application of any party to the proceedings, -
  - (a) order that any hearing held by the Authority be heard in private, either as to the whole or any portion thereof:
  - (b) make an order prohibiting the publication of any report or account of the evidence or other proceedings in any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof:
  - (c) make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Authority.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$3,000 who acts in contravention of any order made by an Authority under subsection (3)(b) or (c).

Compare 1993 No 82 s 107

## **128 Power to proceed if either party fails to attend**

- (1) If either party fails to appear or be represented at the hearing of proceedings before an Authority, the Authority may -
  - (a) adjourn the hearing; or
  - (b) determine the proceedings in the absence of the party so failing to appear or be represented.
- (2) Where under this section an Authority determines a proceeding in the absence of any party, the Authority may, on the application of that party, if the Authority thinks fit, grant a rehearing of the proceedings. When such a rehearing is granted, the determination of the Authority made on the initial hearing shall immediately cease to have effect.

## **129 Hearing on papers**

- (1) Despite anything in this Act to the contrary, an Authority may determine a proceeding on the papers if the Authority considers it appropriate.

- (2) Before doing so, the Authority must give the parties an opportunity to comment on whether the proceeding should be dealt with in that manner.

Compare 1994 No 165 s 20A

### **130 Use of electronic facilities to hear matters**

The hearing of a matter or any part of it may be conducted by telephone, audiovisual link, or other remote access facility if an Authority considers it appropriate and the necessary facilities are available.

Compare 1994 No 165 s 20B

### **131 Authority may dismiss frivolous or vexatious proceedings**

Any Authority may at any time dismiss any proceedings brought under this Act if the Authority is satisfied that they are frivolous, vexatious, or are not brought in good faith.

Compare 1994 No 165 s 20B; 1993 No 82 s 115

### **132 Authority may strike out, determine, or adjourn proceeding**

- (1) An Authority may strike out, in whole or in part, a proceeding if satisfied that it -
- (a) discloses no reasonable cause of action; or
  - (b) is likely to cause prejudice or delay; or
  - (c) is frivolous or vexatious; or
  - (d) is otherwise an abuse of process.
- (2) If a party is neither present nor represented at the hearing of a proceeding, an Authority may, -
- (a) if the party is required to be present, strike out the proceeding; or
  - (b) determine the proceeding in the absence of the party; or
  - (c) adjourn the hearing.

Compare 1994 No 165 s 21; 1993 No 82 s 115A

### **133 Power to make interim order**

- (1) In respect of any matter in which an Authority has jurisdiction under this Act to make any final determination, the Authority shall have power to make an interim order if the Authority is satisfied that it is necessary in the interests of justice to make the order to preserve the position of the parties pending a final determination of the proceedings.
- (2) An application for an interim order may be made by a party to the proceedings, and a copy of the application shall be served on the other party or parties to the proceeding, who shall be entitled to be heard before a decision on the application is made.

Compare 1993 No 82 s 95

### **134 Review of interim orders**

Where an interim order has been made, a party may, with the leave of the Authority and instead of appealing against the order, apply to the High Court to vary or rescind the order unless that order was made with that party's consent.

### **135 Power to order costs in certain cases**

- (1) Where –
  - (a) a party fails to appear at the time fixed for any proceeding before an Authority, or fails to give adequate notice of the abandonment or settlement of the proceeding; or
  - (b) an Authority strikes out a proceeding under section 131 (*Authority may dismiss frivolous or vexatious proceedings*) or 132 (*Authority may strike out, determine, or adjourn proceeding*), the Authority may order a party to pay to the Crown such sum in respect of the costs of the Authority as the Authority considers reasonable.
- (2) An order by an Authority under this section shall be subject to appeal under section 142 (*Appeals to High Court*) as if –
  - (a) the order were a determination, or a part of any determination, of the Authority on the proceeding in respect of which the costs were ordered; and
  - (b) the amount of costs ordered were an amount of costs ordered were an amount of tax or duty, -and section 137 (*Decision of an Authority*) shall apply accordingly with any necessary modifications.
- (3) For the purpose of enforcing any order of an Authority made under this section, a duplicate of the order may be lodged in the District Court, and shall be enforceable in all respects as a final judgment of that court in its civil jurisdiction.

### **136 Stating case for High Court**

- (1) An Authority may, at any time before or during the hearing or before delivering the Authority's decision, on the application of any party to the proceedings or of the Authority's own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Authority.
- (2) The Authority shall give notice to the parties to the proceedings of the Authority's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.
- (3) Except where the Authority intends to state the case of its own motion, the question shall be in the form of a special case drawn up by the parties to the proceedings and, if the parties do not agree, to be settled by the Authority.
- (4) Where the Authority intends to state the case of its own motion, the Authority shall itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.
- (5) The High Court may order the removal into the Court of Appeal of any case stated for the opinion of the High Court under this section.
- (6) The High Court or the Court of Appeal, as the case may be, shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Authority.



Compare 1993 No 82 s 122; 1994 No 165 s 24

### **137 Decision of an Authority**

- (1) On the determination of a proceeding, an Authority acting in its general jurisdiction must give its decision in writing and state the reasons for the decision, including:
  - (a) relevant findings of fact; and
  - (b) explanations and findings on relevant issues of law; and
  - (c) conclusions on matters or issues it considers require determination in order to dispose of the matter.
- (2) The Authority must notify the parties of every decision of the Authority.

Compare 1994 No 165 s 25; 1993 No 82 s 116

### **138 Contempt of Authority**

- (1) If any person –
  - (a) threatens, or intimidates, or intentionally insults or obstructs an Authority or any witness or officer of an Authority during a sitting of an Authority or in going to, or returning from, a sitting of an Authority; or
  - (b) threatens, or intimidates, or intentionally insults or obstructs any person in attendance at a sitting of an Authority; or
  - (c) intentionally interrupts, or otherwise misbehaves at, a sitting of an Authority; or
  - (d) intentionally and without lawful excuse disobeys an order or direction of an Authority in the course of any proceedings before the Authority,any officer of the Authority, with or without the assistance of any constable or other person may, in accordance with any order given by the Authority, take the person into custody and detain them for a period expiring not later than 1 hour following the rising of the Authority, and the Authority may, if the Authority thinks fit, by warrant under the Authority's hand, commit the person to prison for any period not exceeding 10 days or impose a fine not exceeding \$1,500.
- (2) A warrant under subsection (1) may be filed in the District Court and shall then be enforceable as an order made by that court.

Compare 1993 No 82 s 114; 1994 No 165 s 25A

### **139 Practice notes**

- (1) All Authorities acting together may issue practice notes, to apply to all of them, as they think fit.
- (2) The practice notes must not be inconsistent with this Act or any regulations made under it and are for the guidance of an Authority, officers of an Authority, and parties before an Authority.

### **140 Online publication of information about procedures, time frames, and progress of decisions**

The following information must be published on an internet site maintained by or on behalf of the chief executive of the Ministry of Justice:

- (a) information about the purpose of the Charities Review Authorities and how to commence a proceeding:
- (b) any requirements that must be met for a proceeding:
- (c) guidelines on how and when parties may obtain information on the progress of their case and when a decision may be expected.

Compare 1993 No 82 s 121B; 1994 No 165 s 25C

#### **141 Online publication of final written decisions**

- (1) Every final written decision of an Authority must be published on an internet site as soon as practicable unless there is good reason not to publish it.
- (2) A final written decision may be published in part if there is good reason for not publishing the full decision.
- (3) Subsections (1) and (2) are subject to section 127(2) (*Sittings to be held in public except in special circumstances*).
- (4) Good reason not to publish a decision, or part of it, includes the following:
  - (a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:
  - (b) taking into account the presumption in subsection (1) in favour of publication, the Authority nevertheless determines that the decision or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.
- (5) In this section, **final written decision** means a written decision that determines, or substantially determines, the outcome of proceedings before an Authority and is either of the following:
  - (a) a written reserved decision following an oral hearing:
  - (b) a written decision in any case considered on the papers.

Compare 1993 No 82 s 121C

#### *Appeals*

#### **142 Appeals to High Court**

- (1) The determination of an Authority on a proceeding may be appealed to the High Court.
- (2) Every appeal under this section shall be made by giving notice of appeal within 22 working days after the date of the giving by the Authority in writing of the decision to which the appeal relates.
- (3) In determining any appeal under this section, the High Court shall have the powers conferred on the Authority by section 125 (*Evidence in proceedings before an Authority*), and that section shall apply accordingly with such modifications as are necessary.
- (4) In its determination of any appeal, the court may –
  - (a) confirm, modify, or reverse the order or decision appealed against, or any part of that order or decision:

- (b) exercise any of the powers that could have been exercised by the Authority in the proceedings to which the appeal relates.
- (5) Notwithstanding anything in subsection (4), the court may in any case, instead of determining any appeal, refer to the Authority, in accordance with the rules of court, for further consideration by the Authority, the whole or any part of the matter to which the appeal relates.
- (6) Subject to the provisions of this Act, the procedure in respect of any such appeal shall be in accordance with the rules of court.
- (7) Notice of appeal shall not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Authority or the High Court so orders.

Compare 1994 No 165 s 26A

### **143 Appeal to Court of Appeal**

- (1) Any party to any proceedings before the High Court under this Act may, with the leave of the High Court, appeal to the Court of Appeal, provided that, if the High Court refuses to grant leave to appeal to the Court of Appeal, the Court of Appeal may grant special leave to appeal.
- (2) A party desiring to appeal to the Court of Appeal under this section shall, within 15 working days after the determination of the High Court, or within such further time as that court may allow, give notice of their application for leave to appeal in such manner as may be directed by the rules of that court, and the High Court may grant leave accordingly if in the opinion of that court the question involved in the appeal is one which, by reasons of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (3) Where the High Court refuses leave to any party to appeal to the Court of Appeal under this section, that party may, within 15 working days after the refusal of the High Court or within such further time as the Court of Appeal may allow, apply to the Court of Appeal, in such manner as may be directed by the rules of that court, for special leave to appeal to that court, and the Court of Appeal may grant leave accordingly if, in the opinion of that court, the question involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.
- (4) On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.
- (5) The decision of the Court of Appeal on any application to that court for leave to appeal shall be final.

### **144 Costs on appeal**

The High Court shall have power to make such order as to the whole or any part of the costs of an appeal under section 142 (*Appeals to High Court*) as may seem just but every order for costs shall follow the outcome of the appeal unless the court otherwise orders.

## **PART 11 – ENFORCEMENT**

### **145 Overview**

This part relates to matters of enforcement, including providing for –

- (a) administrative penalties to be imposed for late submission of a notice of change or an annual return;
- (b) holding out offences;
- (c) financial reporting offences; and
- (d) banning orders.

#### *Administrative penalties*

### **146 Te Kairēhita Aroha may require payment of administrative penalty**

- (1) Te Kairēhita Aroha may, by written notice to a registered charitable entity, require the entity to pay to Te Kairēhita Aroha an amount by way of penalty for –
  - (a) a failure by the registered charitable entity to send or deliver to Te Kairēhita Aroha an annual return under section 60 (*Duty to prepare annual return and financial statements*) within the time prescribed by that section; or
  - (b) a failure by the registered charitable entity to send or deliver to Te Kairēhita Aroha a notice under section 64 (*Duty to notify changes to Te Kairēhita Aroha*) within the time prescribed by that section.
- (2) The penalty for a failure by a registered charitable entity to send or deliver to Te Kairēhita Aroha an annual return under section 60 (*Duty to prepare annual return and financial statements*) within the time prescribed by that section is \$200.
- (3) The penalty for a failure by a registered charitable entity to send or deliver to Te Kairēhita Aroha a notice of change required under section 64 (*Duty to notify changes to Te Kairēhita Aroha*) within the time prescribed by that section is \$100.
- (4) The amounts payable under this section –
  - (a) must be paid to Te Kairēhita Aroha by the date for payment specified in the notice; and
  - (b) are recoverable by Te Kairēhita Aroha in any court of competent jurisdiction as a debt due to Te Kairēhita Aroha.

Compare 2005 No 39 s 58; SR 2006/301 reg 9

#### *Holding out offences*

### **147 No holding out unless registered under this Act**

- (1) A person must not –
  - (a) use a style or title including the words “registered charitable entity”; or
  - (b) state or imply, or permit a statement or implication, that –
    - (i) the person is registered under this Act; or
    - (ii) an entity that the person acts on behalf of is registered under this Act.
- (2) Subsection (1) does not apply to –
  - (a) a registered charitable entity; or

- (b) a person who acts on behalf of a registered charitable entity.
- (3) A person must not state or imply, or permit a statement or implication, that the person acts on behalf of a registered charitable entity if the person does not act on behalf of that registered charitable entity.

Compare: 2005 No 39 s 37

#### **148 Offence to contravene section 147 (*No holding out unless registered under this Act*)**

- (1) Every person who acts in contravention of section 147(1) (*No holding out unless registered under this Act*) commits an offence and is liable on conviction to a fine not exceeding \$30,000.
- (2) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against subsection (1) ends on the date that is 2 years after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Compare: 2005 No 39 s 38

#### *Financial reporting offences*

#### **149 Offence to knowingly fail to comply with standards**

- (1) A registered charitable entity and every responsible person of the registered charitable entity commit an offence and are liable on conviction to a fine not exceeding \$50,000 if -
  - (a) the financial statements of the registered charitable entity referred to in section 60(2)(b) (*Duty to prepare annual return and financial statements*) fail to comply with an applicable financial reporting standard or a non-GAAP standard (as the case may be); and
  - (b) the registered charitable entity or responsible person (as the case may be) knows, at the time that the financial statements accompany the annual return when it is sent or delivered under section 60, that the financial statements fail to so comply.
- (2) If financial statements are prepared on a consolidated basis in respect of a single entity under section 79(2) (*Te Kairēhita Aroha may recognise group on certain terms and conditions*), subsection (1) applies as if the reference to financial statements were a reference to the financial statements for the single entity and the other references to a registered charitable entity were references to the parent entity.

Compare: 2005 No 39 s 42B

#### **150 Offence relating to audit or review**

If a registered charitable entity fails to comply with section 61 (*When financial statements must be audited or reviewed*), the registered charitable entity commits an offence and is liable on conviction to a fine not exceeding \$50,000.

Compare: 2005 No 39 s 42E

#### *Information offences*

#### **151 Offences relating to information**

- (1) No person may, -

- (a) without reasonable excuse, refuse or fail to comply with a notice under section 97 (*Inquiries and additional reports*); or
  - (b) in purported compliance with a notice under section 97, supply information, or supply a document, knowing it to be false or misleading.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against subsection (2) ends on the date that is 6 months after the date on which the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Compare: 2005 No 39 s 52

### *Banning orders*

## **152 Court may disqualify responsible persons**

- (1) A hearing authority may make a banning order against a person (**A**) if –
- (a) A has been convicted of an offence under this Act, or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
  - (b) A has, while a responsible person of a registered charitable entity and whether convicted or not –
    - (i) persistently failed to comply with this Act or, if the registered charitable entity has failed to so comply, persistently failed to take reasonable steps to obtain compliance with this Act; or
    - (ii) been guilty of fraud in relation to the registered charitable entity or of a breach of duty under this Act; or
    - (iii) acted in a reckless or incompetent manner in the performance of A's duties as a responsible person of a registered charitable entity; or
  - (c) A has become of unsound mind.
- (2) A banning order may, permanently or for a period specified in the order, prohibit or restrict A, without the leave of the hearing authority, from doing either or both of the following things:
- (a) being a responsible person of a registered charitable entity;
  - (b) being concerned or taking part in the management of a registered charitable entity in any way (whether directly or indirectly).
- (3) The hearing authority may make an order under this section permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.
- (4) The Registrar of the hearing authority must, as soon as practicable after an order is made under this section, give notice that the order has been made to Te Kairēhita Aroha.
- (5) Te Kairēhita Aroha must, after receiving a notice under subsection (4), give notice in the Gazette of the name of the person against whom the order is made.

### 153 Applications for orders

- (1) A person intending to apply for an order under section 152 (*Court may disqualify responsible persons*) must give not less than 10 working days' notice of that intention to the person (**A**) against whom the order is sought, and on the hearing of the application, A may appear and give evidence or call witnesses.
- (2) An application for an order under section 152 may be made by –
  - (a) Te Kairēhita Aroha, the Official Assignee, or the liquidator of the registered charitable entity; or
  - (b) any person who is concerned with the registered charitable entity, including a responsible person, member, creditor, liquidator, the Attorney-General, or other person.
- (3) Subsection (4) applies on the hearing of –
  - (a) an application for an order under section 152 by Te Kairēhita Aroha, the Official Assignee, or the liquidator; or
  - (b) an application for leave under section 152 by a person against whom an order has been made on the application of Te Kairēhita Aroha, the Official Assignee, or the liquidator.
- (4) Te Kairēhita Aroha, the Official Assignee, or the liquidator (as the case may be) –
  - (a) must appear and call the attention of the hearing authority to any matters that seem to them to be relevant; and
  - (b) may give evidence or call witnesses.

Compare: 2005 No 39 ss 31(4) and 36(2); Exposure Draft Incorporated Societies Bill clause 125

### 154 Banning order contravention

A person who acts in contravention of an order made under section 153 (*Applications for orders*) commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year, a fine not exceeding \$50,000, or both.

Exposure Draft Incorporated Societies Bill clause 119

#### *Prosecution of offences*

### 155 Prosecution of offences

- (1) Proceedings in respect of an offence against this Act must be commenced by Te Kairēhita Aroha or a person authorised by Te Kairēhita Aroha (the **authorised person**).
- (2) Before a charging document in respect of an offence against this Act is filed against a person, Te Kairēhita Aroha or the authorised person must lay the facts of the case, so far as Te Kairēhita Aroha or the authorised person is acquainted with them, before a Crown Solicitor.
- (3) Te Kairēhita Aroha or the authorised person may file a charging document against a person only if a Crown Solicitor certifies that there are reasonable grounds for a prosecution.

- (4) No action may be taken against Te Kairēhita Aroha or the authorised person for malicious prosecution in relation to a prosecution under this Act if a Crown Solicitor certified that there were reasonable grounds for bringing the prosecution.

Compare: 2005 No 39 s 74

## **PART 12 - MISCELLANEOUS**

### **Subpart 1 – Notices**

#### **156 Notices**

- (1) Any notice given under this Act by Te Kairēhita Aroha is sufficiently given if –
- (a) it is in writing; and
  - (b) it is –
    - (i) under the seal of Te Kairēhita Aroha; or
    - (ii) signed by the chairperson of Te Kairēhita Aroha; or
    - (iii) signed by 1 or more of the members of Te Kairēhita Aroha; or
    - (iv) signed by any person purporting to act by direction of Te Kairēhita Aroha; and
  - (c) it is served or given in accordance with section 157 (*Service of notices*) on or to the person or persons primarily concerned or on or to any person considered by Te Kairēhita Aroha to represent the person or persons primarily concerned.
- (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, Te Kairēhita Aroha or to be sealed with the seal of Te Kairēhita Aroha must be treated as having been signed or sealed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

Compare: 2005 No 39 s 56; Charities Bill 108-2, clause 64A

#### **157 Service of notices**

- (1) If this Act authorises Te Kairēhita Aroha to serve a notice on, or give a notice to, any person, the notice may be served or given by –
- (a) delivering it to that person; or
  - (b) leaving it at –
    - (i) the person's usual or last known place of residence or business; or
    - (ii) the address specified by the person in any notice, application, or other document made, given, or tendered to Te Kairēhita Aroha under this Act; or
  - (c) posting it by letter addressed to the person at that place of residence or business or at that address.
- (2) If any notice is sent to any person by registered letter, then, –
- (a) unless the contrary is proved, the notice must be treated as having been delivered to the person when it would have been delivered in the ordinary course of post; and



- (b) in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.
- (3) If the notice is required to be served on, or given to, an entity, -
  - (a) the notice may be served on, or given to, a responsible person or any other person holding a similar position in the entity; and
  - (b) service on the entity must, unless otherwise directed by Te Kairēhita Aroha, be treated as service on all persons who are responsible persons of the entity, or who are represented on the entity by those responsible persons.

Compare: 2005 No 39 s 57; Charities Bill 108-2, clause 64B

## **Subpart 2 – Regulations**

### **158 Regulations**

- (1) The Governor-General may, from time to time, by Order in Council, make regulations for the due administration of this Act and for the conduct of all persons concerned in its administration and generally for carrying this Act into effect.
- (2) Without limiting the power to make regulations conferred by subsection (1), regulations may be made under that subsection for all or any of the following purposes:
  - (a) prescribing forms for the purposes of this Act;
  - (b) prescribing requirements for –
    - (i) specified information or documents to be included in or attached to forms;
    - (ii) forms to be signed by specified persons;
  - (c) prescribing requirements with which documents sent or delivered for registration must comply;
  - (d) with respect to annual returns, prescribing -
    - (i) the form of the returns;
    - (ii) the particulars to be contained in the returns;
    - (iii) directions to be complied with in the preparation of the returns;
 and different requirements may be prescribed for different types or classes of entities:
  - (e) prescribing fees payable to Te Kairēhita Aroha in respect of any matter under this Act or the manner in which fees may be calculated;
  - (f) prescribing amounts payable to Te Kairēhita Aroha by way of penalty or the manner in which penalties may be calculated;
  - (g) prescribing procedures, requirements, and other matters for the register of charities, including matters relating to –
    - (i) the operation of that register;
    - (ii) access to that register;
    - (iii) the location of, and hours of access to, that register;

- (h) declaring any class or classes of persons to be, or not to be, responsible persons for the purposes of this Act:
  - (i) prescribing or providing for the fixing of fees payable in respect of applications for rulings under this Act, which such regulations may –
    - (i) specify the persons by whom any fees are payable:
    - (ii) prescribe specific fees for specific work or services:
    - (iii) prescribe a scale of fees or a rate based on the time involved in carrying out the work or services:
    - (iv) allow Te Kairēhita Aroha to waive, in whole or in part, any fees that are payable:
  - (j) prescribing the practice and procedure of Authorities in relation to appeals under this Act:
  - (k) making any provision which may be necessary or desirable to enable Authorities to exercise their functions or to publish their decisions and determinations:
  - (l) prescribing the practice and procedure in respect of appeals from decisions and determinations of Authorities:
  - (m) prescribing the fees to be paid in respect of the filing of any proceedings brought before an Authority under this Act:
  - (n) prescribing the circumstances in which any fees paid or to be paid in respect of the filing of any proceedings brought before an Authority under this Act may be refunded, remitted, or waived, in whole or in part:
  - (o) prescribing offences in respect of the contravention of any regulations made under this Act, and prescribing penalties not exceeding \$2,000 in respect of those offences:
  - (p) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Te Kairēhita Aroha may refuse to perform a function or exercise a power until the fee prescribed by regulations is paid.
  - (3) Any Order in Council made under subsection (1) may authorise Te Kairēhita Aroha to refund or waive, in whole or in part and on any conditions as may be prescribed by regulations, payment of any fee or amount payable in relation to any person or class of persons.
  - (4) Any fee or amount payable to Te Kairēhita Aroha is recoverable by Te Kairēhita Aroha in any court of competent jurisdiction as a debt due to Te Kairēhita Aroha.

Compare: 1994 No 166 s 91I; 1994 No 165 s 30; 2005 No 39 ss 42, 72A, 73; Charities Bill 108-2, clause 139

### **Subpart 3 – Amendments to Tax Administration Act 1994**

#### **159 Tax Administration Act 1994 called principal Act in this subpart**

In this subpart, the Tax Administration Act 1994 (1994 No 166) is called “the principal Act”.

## 160 Interpretation

Section 3(1) of the principal Act is amended by inserting, after the definitions of **issuing officer** and **taxpayer's total tax figure** respectively, the following definitions:

**"Te Kairēhita Aroha** means the organisation established under section 20 of Te Ture Tautoko i te Aroha – the Charities Act **2022**."

**"Te Māngai Aroha** means the organisation established under section 34 of Te Ture Tautoko i te Aroha – the Charities Act **2022**."

## 161 Requirement to consult

After section 6B of the principal Act, the following section is inserted:

**"6BA – Requirement to consult**

Before proposing any amendment to an Inland Revenue Act that would or may affect a charitable entity, whether or not that entity is registered under Te Ture Tautoko i te Aroha – the Charities Act **2022**, the Commissioner must –

- (a) consult with Te Māngai Aroha; and
- (b) have regard to the advice of Te Māngai Aroha."

## 162 Disclosure rules

Rule 27 of schedule 7 (*Disclosure rules*) of the principal Act is repealed and replaced by the following:

**"27 Agency administering charities legislation**

Section 18 does not prevent the Commissioner communicating to Te Kairēhita Aroha any information, being information that the Commissioner considers is not undesirable to disclose and is reasonably necessary to enable Te Kairēhita Aroha to carry out any duty lawfully conferred on Te Kairēhita Aroha relating to the exercise of its powers or the performance of its functions and duties under the Charities Act **2022**."

## Subpart 4 – Amendments to Income Tax Act 2007

### 163 Income Tax Act 2007 called principal Act in this subpart

In this subpart, the Income Tax Act 2007 (2007 No 97) is called "the principal Act".

### 164 Community housing trusts and companies

Section CW42B of the principal Act (*Community housing trusts and companies*) is repealed.

### 165 Meaning of charitable or other public benefit gift

- (1) Section LD 3(2)(ab)(i) and (3)(a) of the principal Act is amended by replacing the reference to the Charities Act 2005 with a reference to the Charities Act **2022**.
- (2) Section LD 3(2)(ac) of the principal Act (relating to community housing entities) is consequentially repealed.

### 166 Family scheme income

Sections MB 7(2)(a) and MB 13(2)(e) of the principal Act are amended by replacing the reference to the Charities Act 2005 with a reference to the Charities Act **2022**.

## **167 Definitions**

- (1) In section YA 1 of the principal Act, the definition of **charitable purpose** is repealed and replaced with the following:  
“**charitable purpose** has the meaning given to that term by the Charities Act 2022”
- (2) Section YA 1 of the principal Act is amended by inserting, after the definition of refundable tax credit, the following definition:  
“**registered charitable entity** means an entity registered under the Charities Act 2022”
- (3) Section YA 1 of the principal Act is amended by replacing the reference to the Charities Act 2005 with a reference to the Charities Act 2022 in the following definitions:
  - (i) paragraph (ab) of the definition of **charitable organisation**:
  - (ii) paragraph (a) of the definition of **day of final decision**:

## **Subpart 5 – Miscellaneous provisions**

### **168 Review of operation of Act**

- (1) The Minister shall, not later than 5 years after the day on which this Act is passed, and then at intervals of not more than 5 years, commence a review of the operation of this Act.
- (2) After the review has been completed, the persons undertaking the review shall give the Minister a written report of the review.
- (3) The Minister must lay before Parliament a copy of the report mentioned in subsection (2).

Compare: 1993 No 28 s 26; 2014 No 56 s 282; Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth) s 16; Charities Act 2006 (UK) s 73; Charities Act 2009 (Ireland) s 6

### **169 Repeal of Charities Act 2005**

The Charities Act 2005 (2005 No 39) is repealed.

### **170 Revocation of Charities (Fees and Other Matters) Regulations 2006**

The Charities (Fees and Other Matters) Regulations (SR 2006/301) are revoked.

### **171 Amendments to other Acts**

The enactments in **schedule 1** are amended in the manner indicated in that schedule.

**Schedule 1**  
**Amendments to other Acts**

s171

[To insert]

DRAFT