

CHARITIES
SERVICES

Ngā Rātonga Kaupapa Atawhai



Officer Kit

A resource for certified
officers of Registered Charities

INTERNAL AFFAIRS



Te Tari Taiwhenua

New Zealand Government

Supporting charities

— *in New Zealand* —
for stronger communities

Disclaimer

This information is intended to be a guide and to provide a summary of useful information related to being an officer of a Registered Charity in New Zealand. The Department of Internal Affairs makes every reasonable effort to offer accurate and current information. However, we do not accept any liability in respect of a party's reliance on the material in this guide.

The information presented in this resource is not business, tax or legal advice and should not be construed as such. Readers are advised to take specific advice from qualified professionals, including independent legal advice.

Please note for the purposes of this resource the term 'Registered Charity' is used throughout, to mean 'registered charitable entity' in accordance with the Charities Act 2005.

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Surf Life Saving

Introduction

This resource aims to help you understand the responsibilities of being a certified officer of a Registered Charity. It also provides information about Charities Services and the benefits and obligations of being a Registered Charity, answers some common questions, and recommends useful resources.

The role of Charities Services

Charities Services, *Ngā Rātonga Kaupapa Atawhai* is part of the Department of Internal Affairs, and is legislated by the Charities Act 2005. Our role is to promote public trust and confidence in the charitable sector and to encourage and promote the effective use of charitable resources.

We do this by registering and monitoring charities and processing Annual Returns. We also encourage good governance and management practices by providing educational support, advice and materials.

Charities Services maintains the Charities Register, which contains information about more than 27,000 registered charities. The Charities Register is the public record of registered charities that operate under the rules of the Charities Act 2005.

Charities Services works closely with the Department of Internal Affairs' nationwide team of Community Operations Advisors and staff from other government agencies, such as Inland Revenue and the Ministry of Business, Innovation and Employment. We also provide advice to Government and other stakeholders in the wider not-for-profit sector. In addition, we publish relevant data and research to help build understanding, trust and confidence in the charitable sector.

An independent Charities Registration Board meets regularly to apply the law and make decisions regarding the charitable status of organisations.

Benefits and obligations of being a Registered Charity

Being a Registered Charity brings with it a number of benefits, and some obligations. As an officer, you should have a general understanding of these.

Benefits

Being a Registered Charity means:

- 1 You can call yourself a registered charitable entity. It is an offence to even imply that you are a registered charitable entity if you are not registered under the Charities Act 2005.
- 2 You are eligible for exemptions from income tax on all or some of your income, as well as being entitled to other tax benefits. You may also be eligible for donee organisation status* – contact Inland Revenue for more information on this.
- 3 You can apply to funders who only fund Registered Charities.
- 4 Supporters, stakeholders and funders can find detailed information about your organisation on the Charities Register.
- 5 Your registration number can be displayed on promotional and identification material to provide proof of your registered charitable status to prospective donors and funders.
- 6 You will enjoy improved public trust and confidence as information about your activities and the way you use your resources is available on the Charities Register.
- 7 Your representatives can attend Charities Services' annual meetings and access education and training events and forums.

* People can claim a tax credit when donating to a donee organisation.

Obligations

Being a Registered Charity brings with it some obligations. You must:

- 1 Operate in accordance with the Charities Act 2005.
- 2 Carry out activities to advance exclusively charitable purposes as per the legal definition (see the 'Charitable purpose' section of our website for more information).
- 3 Operate in accordance with your organisation's rules.
- 4 Ensure your organisation provides only public (and not private) benefit.
- 5 Provide your registration number to any member of the public who asks for it.
- 6 Maintain updated and accurate information about your organisation on the Charities Register, including providing a copy of your most recent annual accounts (via the Annual Return).
- 7 Notify Charities Services of any changes to your organisation, such as a change in rules, officers or address (via a Notice of Change).
- 8 Provide any information about your organisation requested by Charities Services (under Section 51 of the Charities Act 2005).
- 9 Recognise that your organisation's information will be made publicly available on the Charities Register, unless Charities Services considers it is in the public interest not to include that information or document on the public Register.

Who are your officers and what do they do?

Officers of a charitable entity are responsible for ensuring that their organisation is run in accordance with its rules and the requirements of the Charities Act 2005. In particular, an officer needs to ensure that their organisation's funds and assets are used to advance the charitable purposes of the organisation. Your organisation's charitable purposes are stated in its rules document, so one of the most important roles of an officer is to have a thorough understanding of these rules.

Issues and disputes can arise when officers don't understand their charity's rules. Take time to familiarise yourself with the relevant documents, and make sure your fellow officers do the same. It's also useful to think about how new officers will be told about their obligations under your rules.

Who are your officers?

The Charities Act 2005 may define 'officers' differently to the way your charity's rules define them. Your rules could be called a constitution, trust deed or governing document.

If your organisation is a trust, your officers are all your current trustees (including any custodian trustee) and no one else.

If your organisation is not a trust, your officers are all the members of your board or highest governing body and all the people in a position to exercise significant influence over the management or administration of the charity.

If you do not have trustees, a board, or governing body, your officers are all the people in a position to exercise significant influence over your management or administration. In some cases, such as a co-operative, the officers may be all the members.

Note: Check your rules to see if they specify how many trustees or governing body members you must have. For example, if they specify five trustees, you must certify five trustees.

Officer qualification

Officers need to certify to Charities Services that they fit the criteria to be an officer of a charitable entity. There are a range of factors that may prevent someone from being qualified as an officer under the Charities Act 2005, for example, if they are under 16 years old, an undischarged bankrupt, or have been convicted of a crime involving dishonesty. Check out the 'Officer certification' section on our website for further information.

Officer resignation

An officer can choose to resign, but under certain circumstances, some of their liabilities and obligations may remain in place for a period after their resignation.

Check your rules document to see what it says about how you must appoint officers, and what must happen if they want to resign.

Remember that the Charities Act 2005 or a charity's rules may require an officer to resign in certain circumstances. For example, an officer is no longer qualified as an officer under the Charities Act 2005 if they become an undischarged bankrupt or are convicted of a dishonesty offence.

If an officer of your charity resigns or is removed, you must notify Charities Services, and certify any new officer who is appointed in their place.

Delegating responsibilities

An officer cannot delegate their duties unless their charity's rules authorise them to do so. Even if duties can be delegated under your rules, officers still remain legally responsible for making sure the work is done and all necessary standards are met.

For example, a charity could employ an accountant to prepare its accounts and submit its Annual Return to Charities Services. The charity's officers are still responsible for making sure the accounts are prepared, that they meet any standards required by the charity's rules document and any relevant legislation, and that they are submitted on time to Charities Services.

Payments to officers

Charities can reimburse expenses incurred by officers while carrying out their charitable purposes.

Any payments made must be reasonable and not more than the market rate. To ensure transparency, policies and procedures should be in place to manage any conflict of interest.

To be registered under the Charities Act 2005, Charities Services must be satisfied that your organisation was not set up simply to create a job for an individual or to create a profit for someone. Your rules should clearly show this and make it clear that your organisation may only act to carry out its charitable purposes.

If a trust wants to make payments or provide benefits to its trustees, its rules must clearly show that this is allowed. There must also be processes in place to prevent trustees from acting if there is any conflict of interest.



Porirua Community Arts Council

Geared for success

Regardless of size, income, area of activity or background, there are some key characteristics that effective registered charities demonstrate:

Clear purpose and direction

Effective Registered Charities are clear about the characteristics and needs of their beneficiaries and their charitable purpose(s) and vision. They use this knowledge to guide decision-making and activity. All such information should be included in a charity's formal rules document.

Strong governance

Effective Registered Charities are run by a clearly identifiable group who make all the significant decisions for the charity. They have the right balance of skills and experience, and understand their own and their charity's responsibilities and obligations. This group is responsible for ensuring that the charity carries out its work to achieve its charitable purposes.

The right people for its activities

An effective charity ensures that its people have the right qualities and competence to manage and support the delivery of its services.

Sound and prudent

An effective charity clearly operates in line with its rules document and can identify the financial and other resources needed to achieve its purposes. It can obtain, control and manage those resources to achieve the best possible value from them.



CommunityNet Aotearoa

CommunityNet Aotearoa is an online hub where you can find and share resources designed to strengthen community organisations. It puts quality information in one place making it easy to find the resources you need. CommunityNet includes the Community Resource Kit, which is a guide to setting up and running community groups in New Zealand. Find out more at:

www.community.net.nz



NZ Navigator

Have you heard of NZ Navigator? It's a free online self-assessment tool to help identify your organisation's strengths and weaknesses. Once you complete an assessment, you will have immediate access to a report with charts, scores, feedback, resources and action plan guidance to assist you to further develop your organisation. Find out more at:

www.nznavigator.org.nz

Financial management

As an officer, you are responsible for the financial sustainability of your organisation and ensuring funds and assets are used to advance your organisation's charitable purposes. It's critical that the financial accounting and reporting systems in your organisation are accurate and transparent.

Your organisation must keep written records of your accounts and prepare financial statements. Check your rules to find out if they require your accounts to be audited or reviewed.

Officers also need to be aware of the new assurance requirements for charitable organisations which take effect on 1 April 2015. These require Registered Charities with a total operating expenditure over \$500,000 to have their accounts reviewed, and those Registered Charities with a total operating expenditure over \$1,000,000 to have their accounts audited by a licensed auditor.

Annual Returns

All Registered Charities must file an Annual Return. The Annual Return includes a completed Annual Return form, a copy of your financial statements, and the appropriate fee, if applicable.

The Annual Return form asks for information about:

- the sectors your charity operates in
- activities it is involved in
- who benefits from those activities
- your geographical area of operation
- the people in your charity
- your balance sheet position, and
- your income and expenditure.

Charities Services publishes this information on the Charities Register as part of our commitment to promoting public trust and confidence, and in accordance with the requirements of the Charities Act 2005. Annual Returns must be filed within six months of your balance date. Failure to file Annual Returns is one of the main reasons for deregistration of charities.

Reporting standards

Standards have been introduced to improve the quality of financial reporting.

These come into effect from 1 April 2015 and are tiered in complexity according to the size of the charity. This allows smaller charities to prepare financial statements on a simplified basis, while larger charities are required to use full accounting standards.

Tier 1 Over \$30 million annual operating expenditure

Tier 2 Under \$30 million annual operating expenditure

Tier 3 Under \$2 million annual operating expenditure

Tier 4 Under \$125,000 annual operating expenditure

You can find more information on our website.



Personal liability

People often ask us to clarify their personal liabilities as officers of a charity. Your personal liability depends on the structure of your charity.

As an officer, you should have a good understanding of your charity's rules document and its legal structure. You should also understand laws that may apply to your charity such as health and safety, tax, contract and labour laws.

If your organisation is an unincorporated group, you may be personally liable for any obligations the group takes on and for any judgments made against the group by the courts.

If you are an incorporated society or a trust, in general there is limited personal liability, provided decision makers act honestly, prudently, within the group's charitable purposes and not for personal gain.

Note: Make sure you are familiar with the legislative requirements that apply to your organisation's legal structure, e.g. Incorporated Societies Act 1908 and Charitable Trusts Act 1957.

Some key places to learn more about personal liability are:

Community Law Manual

For information about the different legal structures and laws that you should know about.

Companies Office

Societies and Trusts Online for information about Incorporated Societies and Charitable Trusts.

Ministry of Business, Innovation & Employment

For information about health and safety, and employment relations.

Inland Revenue

For tax information.

Independent advice

From a relevant professional, such as an accountant or lawyer.

Resolving disputes

Sometimes, disputes can occur between a charity's members, within its governing and management bodies or between the charity and a third party such as a landlord or supplier. It is important that the officers of a charity resolve internal disputes quickly, because they can harm how a charity operates.

It is important that your charity has set policies and procedures for resolving disputes and complaints. These may be set out in your rules or in a separate policy document.

If there are no set procedures and the process breaks down, or the written procedures need clarification, one or more of the people involved in the dispute should look for help from outside the charity.

You could consider:

- approaching your charity's regional or national body, if there is one
- approaching a neutral and respected person from your community – for example, a kaumātua or community elder
- obtaining independent legal advice from a **Community Law Centre** or by engaging a lawyer
- approaching an agency that deals with dispute resolution in the area of concern – for example, the **Ministry of Business, Innovation & Employment**, the **Disputes Tribunal** or **Tenancy Tribunal** or the **Health and Disability Commissioner**

- seeking help from a relevant government department or agency – for example, the **Registrar of Incorporated Societies**, **Ministry of Education**, **Ministry of Health**, **Human Rights Commission**, or **Te Puni Kōkiri**, or
- employing a professional mediator or arbitrator.

You should seek help from an independent professional advisor if the dispute is about contractual or other property rights, which are matters between the charity and a third party. For example:

- employment issues, or claims of unfair dismissal, and
- disputes relating to contracts with the charity, including landlord-and-tenant disputes.

Contact Charities Services if the dispute is related to a breach of the Charities Act 2005 or serious wrongdoing in connection with a Registered Charity. You can find more information about when Charities Services will get involved on the 'Making a complaint' section of our website.

Winding up a charity

A Registered Charity may wind up at any stage. This means that the charity will discontinue their activities and cease to exist. The process of winding up will be different for each charity depending on its legal structure and rules.

There are a number of reasons a charity may wind up, for example:

- the purposes are no longer relevant or services are no longer required
- the charity is not financially sustainable
- a lack of members or support
- the charity is becoming a company or changing its legal status, for example, from a Trust to a Society
- merging with another charity
- the charity has been put into liquidation, or
- they simply wish to wind up.

How does a charity wind up?

Once the decision has been made to wind up, the charity will need to settle all their finances; collect any credits owed and pay all debts.

It is also very important to carefully read the charity's rules to see if it contains a 'wind-up clause'. If the charity has investment, cash, or land assets, they will need to follow the wind-up clause or ensure assets are used for exclusively charitable purposes. One way to do this is to transfer assets to a Registered Charity.

A Registered Charity must let Charities Services know they are going to wind up so the charity can be removed from the Register. If the charity is incorporated either as a Charitable Trust, Incorporated Society, or a Company, the Companies Office will need to be advised. You will also cease to qualify for some tax exemptions and benefits. Contact Inland Revenue if you are unsure of your tax obligations.

Changing legal structure

A charity cannot simply change from one legal structure to another. A new organisation would need to be set up and go through the application process to become a Registered Charity. At this point the original charity could wind up and assets could be transferred to the new Registered Charity. Remember, it is important to carefully read your charity's rules and follow the wind-up clause, if included.

For more information see the 'Deregistration and winding up' section of our website.

Contacts and resources

Charities Services

Freephone (Within New Zealand)	0508 CHARITIES (0508 242 748)
Calling from outside New Zealand	+64 4 495 7200
Website	www.charities.govt.nz
Email	info@charities.govt.nz
Postal Address	PO Box 30112 Lower Hutt 5040

Fee Summary*

Notifying Charities Services of changes	No charge
Completing Annual Return (if total gross income is under \$10,000)	No charge
Completing Annual Return (via online)	\$51.11
Completing Annual Return (via printed forms)	\$76.67

*As at 01 May 2014

Other organisations that can help

Inland Revenue

Provides support on the tax benefits and obligations for registered charities.

www.ird.govt.nz

Citizens Advice Bureau

Provides information and advice to help people.

www.cab.org.nz

Community Law

Provide free legal help throughout New Zealand, including online guidance on preparing rules documents.

www.communitylaw.org.nz

Funding Information Service

Provides a hub of resourcing information for communities all over New Zealand.

www.fis.org.nz

Department of Internal Affairs Community Advisory Services

Provides advice, information, support and resources to assist the development of resilient and prosperous communities, hapū and iwi.

[www.communitymatters.govt.nz/
Working-with-communities](http://www.communitymatters.govt.nz/Working-with-communities)

Companies Office New Zealand

The government agency responsible for the administration of corporate body registers.

www.business.govt.nz/companies
www.societies.govt.nz

Philanthropy New Zealand

Provides thought leadership and practical help for everyone with an interest in giving.

www.philanthropy.org.nz

Online Resources

NZ Navigator

A resource to help your organisation identify its strengths and weaknesses.

www.nznavigator.org.nz

CommunityNet Aotearoa

An information sharing resource for New Zealand community and voluntary groups.

www.community.net.nz

Community Matters

An online resource helping New Zealand build strong communities.

www.communitymatters.govt.nz

The Community Law Manual

Includes a chapter about Community Organisations and the Law.

[www.communitylaw.org.nz/
community-law-manual](http://www.communitylaw.org.nz/community-law-manual)

Charities Services information in other languages

**Like to speak to us in your own
language? Call 0508 242 748
to speak to a Language Line
interpreter.**

E hiahia ana koe ki te kōrero i roto i tōu ake reo? Waea mai ki 0508 242 748 ki te kōrero ki tētahi kaiwhakamāori ā-waha o Language Line.

E te fia talanoa mai ia matou i lau lava gagana? Vili le 0508 242 748 e te talanoa i se faaliliu upu i le laina mo isi gagana (Language Line).

‘Oku’ ke fie lea mai kiate kimautilu ‘i he lea faka-Tonga? Telefoni ki he 0508 242 748 ke ke lea ki ha tokotaha fakatonulea ‘i he laine ki he lea fakamatakali’ (Language Line).

希望用您的母语和我们交谈吗？请致电 0508 242 748, 用您的母语和语言热线的翻译人员交谈。

¿Le gustaría hablar con nosotros en su propio idioma? Llame al 0508 242 748 para hablar con un intérprete del servicio Language Line.

ご自分の母国語でお話したい方は、Language Line (0508 242 748) までお電話ください。通訳がご利用頂けます。

저희에게 모국어로 말하고 싶으세요? 랭귀지 라인 통역사를 이용하시려면 0508 242 748 로 전화해 주세요.

Você gostaria de falar conosco em sua língua? Ligue para 0508 242 748 e solicite um intérprete da Language Line.





Still have questions?

All of the topics in this resource are covered in more detail on our website. A wealth of information is freely available to support you in your role of officer.

www.charities.govt.nz

