

# Departmental Disclosure Statement

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Charities Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

12 September 2022

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## Part One: General Policy Statement

The Charities Amendment Bill (the Bill) amends the Charities Act 2005 (the Charities Act). The Charities Act is administered by the Department of Internal Affairs.

The objective of the Bill is to make practical changes to support charities to continue their vital contribution to community wellbeing, while ensuring that contribution is sufficiently transparent to interested parties and the public. The Bill does this by:

- Enabling simpler financial reporting from small charities to reduce the compliance burden;
- Improving access to justice for charities in the appeals process;
- Enhancing regulatory decision-making requirements, to further promote transparency and fairness;
- Clarifying the role of officers and supporting the governance of charities; and
- Improving regulatory compliance and enforcement tools.

### Context

The Charities Act provides a registration, reporting, and monitoring system for approximately 28,000 registered entities that carry out charitable purposes. The fundamental elements of the Charities Act (including the definition of charitable purpose) are considered sound and fit for purpose.

Registration as a charitable entity is voluntary. However, registration brings benefits to charities including tax exemptions. The Charities Act aims to promote public trust and confidence in charitable entities and promote the effective use of charitable resources.

Charitable entities can be other types of entities including charitable trusts, companies, societies, and unincorporated bodies. Therefore, charities can also be governed by other legislation such as the Charitable Trusts Act 1957, the Trusts Act 2019, the Companies Act 1993, and the Incorporated Societies Act 2022.

### Why change is needed

The Charities Act has been in place for nearly 20 years. Work to modernise the Charities Act was prompted by changes in the wider operating environment for charities, feedback from the charitable sector, relatively low and decreasing rates of compliance with the Charities Act, and changes to other legislation that charities need to comply with.

In 2012, the Charities Commission was disestablished and the regulatory functions under the Charities Act were split between two bodies – Te Rātā Atawhai, the independent Charities Registration Board (the Board), and the Chief Executive of Te Tari Taiwhenua Department of Internal Affairs (the Chief Executive, the Department). In practice, the Chief Executive delegates to Charities Services, a business group within the Department. Some parts of the charitable sector have a poor perception of the regulator. These stakeholders have advocated for improvements to the regulator's structure, accountability, transparency, and decision-making processes.

In 2015, new financial reporting standards for charities were introduced. Smaller charities have raised that these reporting standards create a high compliance burden. Over time, the rates of compliance with annual reporting have declined.

The wider legislative environment for charities has also changed. For example, there have been changes to the Trusts Act, a new Incorporated Societies Act has been

introduced, and there is more rigorous health and safety obligations on charities to protect their employees and volunteers. This environment has highlighted the challenges that officers face with the governing of charities.

## **Changes in the Charities Amendment Bill**

### *Financial reporting requirements for very small charities*

A key part of the Charities Act is the obligation for all registered charities to report annually on their finances and activities. Financial statements must be prepared in accordance with not-for-profit reporting standards set by the External Reporting Board.

There are four tiers of reporting standards based on the annual expenditure of the charity. Charities with higher expenses are subject to more rigorous reporting, while small charities can provide simplified reports. Over half of registered charities report to tier four (under \$140,000 annual operating payments). Compliance with this standard has been falling since standards were introduced in 2015. Current reporting obligations for very small charities may be disproportionate to the level of transparency and accountability needed from these charities.

To address that problem, the Bill empowers the Chief Executive of the Department to exempt very small charities from the External Reporting Board's reporting standards. An annual return provided to the Chief Executive outlining basic information will still be required for transparency. The basic information required, which might include information such as income and expenditure, will be prescribed by regulations. When considering whether to grant an exemption, the Chief Executive must have regard to the purposes of the Act.

Charities that qualify for the exemption will be defined by financial thresholds set by regulations. That will provide greater flexibility to adjust the thresholds to changes, such as amendments to reporting standards. Regulations would be made on recommendation from the Minister, who must have regard to the purposes of the Act.

Very small charities are often volunteer-run and have limited resources. This new power seeks to balance the compliance burden with the level of transparency and accountability required from these charities.

### *Regulatory decision-making*

The Charities Act requires the Board and the Chief Executive to comply with certain processes when exercising functions and powers under the Act. The Bill enhances these processes to align with best practice and improve transparency, fairness, and accountability of decision-making.

The Bill expands the ability for entities to object to decisions made under the Charities Act. This includes expanding objection rights from deregistration decisions to other significant decisions, such as a decision to decline an application for registration or a decision not to withhold information from the register at the request of the charity. The new process also includes the ability for charities to be heard by the decision-maker in person. This process aims to ensure natural justice is achieved for decision-making that impacts charities.

The Bill expands the timeframe for lodging objections and submitting information to the Chief Executive on administrative matters from 20 working days to two months, recognising that charities are often time poor. The Bill also requires the Board to publish all decline and deregistration decisions for transparency.

The Bill increases the number of Board members from three to five. This aims to improve the Board's diversity of backgrounds and experience and address potential quorum and conflict of interest issues.

The Bill also requires the Chief Executive to consult with the charitable sector when developing significant guidance material, to ensure charities can participate in matters that affect them.

### *Appeals framework*

The Bill empowers the Taxation Review Authority to hear first instance appeals under the Charities Act instead of the High Court. The Taxation Review Authority will be known as the Charities Review Authority (the Authority) when hearing Charities Act appeals.

Appeal mechanisms are important – they encourage high quality decision-making and ensure that decisions are made in accordance with the law. Using the Authority will provide greater access to justice because the High Court setting can be legally complex, costly, and time consuming for charities to follow.

The Authority is considered the most appropriate existing tribunal to hear Charities Act appeals given the historical connection between tax and charities law. Charitable status was previously determined by Inland Revenue prior to the enactment of the Charities Act.

The High Court will remain as an appeal court for the Authority's decisions. The Authority may refer a case to the High Court on questions of law or decide that the High Court should hear the appeal.

The Bill expands the range of appealable decisions to include some decisions by the Chief Executive as well as all decisions of the Board. This recognises that the Chief Executive makes some decisions that could have a significant impact on the charity, and therefore warrant appeals rights.

The current decisions that can be appealed are Board decisions about deregistration, disqualification of an officer, declined applications, publishing possible breaches of the Charities Act, and serious wrongdoing by charities or officers. The Bill maintains this and provides appeal rights for decisions of the Chief Executive about withholding information or documents from the register, changing balance dates for reporting, exemptions from compliance requirements, and treating one or more entities as a single entity. These are the same decisions that can be objected to under the objections process.

The Bill increases the timeframe for lodging an appeal to two months, and charities can self-represent before the Authority, potentially reducing their legal costs.

The Bill makes some consequential amendments to the Taxation Review Authorities Act 1994 to enable the above changes. Regulations will also be made to cover procedural matters relating to the appeals process.

### The decision-making and appeals framework

A summary of the Bill's objections and appeals process is outlined below:

1. The decision-maker (the Board or the Chief Executive) intends to make a decision;

2. The entity or officer receives notice of the intended decision;
3. The entity or officer has two months to object to the intended decision;
4. If no objection is received, the decision automatically becomes final after two months;
5. If objection received, the entity or officer will make submissions, and can be heard by the decision-maker in person if requested;
6. The decision-maker considers the objection and makes a final decision;
7. The entity or officer receives notice of the final decision;
8. The decision takes effect the day after the date of the final decision notice, or a later date if specified in the notice;
9. The entity or officer has two months to appeal the final decision to the Charities Review Authority (or longer if the Authority allows);
10. The Charities Review Authority hears the appeal and make a decision;
11. The entity or officer has 20 working days to appeal the Authority's decision to the High Court (or longer if the High Court allows).

### ***Requirements of officers and governance of charities***

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

The Department heard through stakeholder engagement that officers are not always clear about their role in the charity. The Bill clarifies that the role of an officer is to support the charity to deliver its charitable purpose and comply with obligations under the Charities Act.

The Bill amends the definition of an officer to include people with significant influence over the management or administration of the entity. This ensures that people with influence over decision-making and direction of the charity are defined as officers.

The Bill disqualifies people with a conviction relating to the financing of terrorism from holding officer roles in charities. This change is designed to mitigate the risk to the financial operation of the charity and align with international best practice.

The Bill also requires at least one officer of a charity to be 18 years old or over. This change will create legislative consistency with comparable legislation such as the Companies Act and the Trusts Act (where directors or trustees must be at least 18 years old). The remaining officers of that charity can be 16 or 17 years of age to allow young people to continue to contribute to charitable work by holding officer roles.

Finally, the Bill requires charities to review their rules document or governance procedures annually. This change will help to ensure that charities are actively considering whether their resources are being used to meet their charitable purpose and to ensure their governance processes are up to date, to promote good governance practices. Reviewing governance procedures would therefore include checking whether policies and processes relating to financial management, conflict of interest and officer appointments are still appropriate.

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

Compliance and enforcement actions are important for achieving the purposes of the Charities Act. Education and assistance to meet obligations is generally the first and most widely used step in regulatory compliance. However, a wide range of tools is important to address issues such as no longer qualifying for registration or a breach of the Charities Act, and to address 'serious wrongdoing'. The Bill makes several changes to improve the regulator's compliance and enforcement functions.

The Bill makes explicit the currently implicit obligations for charities to remain qualified for registration (charities must maintain charitable purposes, have qualified persons as officers, and maintain a rules document). This aims to improve clarity and ease of compliance with the Act. It does not introduce new obligations.

The Bill also clarifies part of the definition of 'serious wrongdoing', now defined as an act, omission, or course of conduct punishable by two or more years of imprisonment. This part of the current definition only refers to an 'offence' which would include low level infringement offences that are not consistent with the policy intent. The Bill aims to achieve a consistent level of 'seriousness' for 'serious wrongdoing'. The remaining parts of the definition are unchanged.

At present, the Act only allows the Board to make an order disqualifying an officer from being involved in a charity when deregistering the charity. Deregistering a charity can be disruptive when the wrongdoing may be made by one or more officers. The Bill gives the Board discretion to disqualify an officer at any time if that officer has engaged in 'serious wrongdoing' or significantly or persistently fails to meet their obligations under the Charities Act. This new power enables enforcement to better target who is responsible and is in the best position to change behaviour.

#### *Other changes*

The Bill also makes several minor and technical changes to ensure that the Charities Act is fit for purpose.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Regulatory Impact Statement (RIS): Modernising the Charities Act, the Department of Internal Affairs, 19 October 2021. A copy of the RIS can be accessed on the Department's website <a href="#">here</a> or the Treasury's website <a href="#">here</a> .	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Treasury's RIA Team considered that this RIS could be assessed by the Department. The Department's RIS panel reviewed the RIS in accordance with the Treasury's quality assurance criteria. The panel considered that the RIS met the criteria.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>The RIS outlines the cost benefit analysis. Relevant pages of the RIS are stated below:</p> <ul style="list-style-type: none"> <li>• Reporting requirements for small charities: page 29</li> <li>• Governance of charities: pages 60 to 61</li> <li>• Definition of officer: page 67</li> <li>• Disqualifying factor – criminal convictions: pages 73 to 74</li> <li>• Disqualifying factor – age of officer: page 79</li> <li>• Decision-making and appeals: pages 106 to 108</li> <li>• Compliance and enforcement: pages 124 to 125</li> </ul> <p>The Charities Act prevents charitable entities from obtaining private pecuniary profit. The Bill is not likely to result in substantial loss of income or wealth for any group or persons. No further analysis is provided on this issue.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>The Department has estimated the impact of the cost or benefit from compliance or non-compliance with applicable obligations or standards as low, medium or high. Relevant pages of the RIS are stated below:</p> <ul style="list-style-type: none"> <li>• Governance of charities: pages 60 to 61</li> <li>• Disqualifying factor – criminal convictions: pages 73 to 74</li> <li>• Disqualifying factor – age of officer: page 79</li> <li>• Decision-making and appeals: pages 106 to 108</li> <li>• Compliance and enforcement: pages 124 to 125</li> </ul> <p>There are potential costs or benefits likely to be impacted by the nature and level of regulator effort used to encourage or secure compliance. Relevant pages of the RIS are stated below:</p> <ul style="list-style-type: none"> <li>• Reporting requirements for small charities: page 29</li> <li>• Governance of charities: pages 60 to 61</li> <li>• Disqualifying factor – criminal convictions: pages 73 to 74</li> <li>• Disqualifying factor – age of officer: page 79</li> <li>• Decision-making and appeals: pages 106 to 108</li> <li>• Compliance and enforcement: pages 124 to 125</li> </ul>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Department considered the recommendations from the Financial Action Task Force (FATF) for the disqualifying factors for officers. FATF sets and monitors international standards which seeks to prevent illegal activities and social harm.

FATF recommended that countries should criminalise the financing of terrorism.<sup>1</sup> The Bill disqualifies persons who have a criminal conviction(s) relating to the financing of terrorism from holding officer positions.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Department has engaged with iwi during stakeholder consultation on both legislative and non-legislative options.

Smaller kaupapa Māori charities will likely benefit from reduced compliance costs and the potential for greater engagement with Charities Services to ensure guidance material addresses their specific needs.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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The Department has requested the Ministry of Justice (MoJ) to conduct a Bill of Rights Act (BORA) vet of the Bill. The BORA vet is in progress, and will be made available at: <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/>.

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<sup>1</sup> [FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems](#), page 30.

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>Clause 4(2) of the Bill amends the ‘serious wrongdoing’ offence to mean an act, omission or course of conduct punishable by two or more years of imprisonment (see section 4(1)). The current definition of serious wrongdoing refers only to an “offence”, making it difficult to apply because of uncertainty over the level of ‘seriousness’.</p> <p>The Bill disqualifies persons who have a criminal conviction(s) relating to the financing of terrorism in New Zealand or elsewhere – clause 17 inserts new section 36B(2)(h).</p> <p>This Bill provides the Charities Registration Board with the power to disqualify an officer of a charity for a period not exceeding five years without needing to deregister the entity first – clause 17, new section 36C. The officer can be disqualified if they have engaged in serious wrongdoing, or there has been a significant or persistent failure by the officer to meet their obligations under the Charities Act or any other enactment. The status quo is that an officer cannot be disqualified without the charity being deregistered first.</p> <p>Clause 26 (new Part 2A) creates rights of appeal to the Taxation and Charities Review Authority (an expansion of the Taxation Review Authority) against decisions made by the Charities Registration Board and certain decisions of Department’s Chief Executive. The current first right of appeal is to the High Court. Being able to appeal to the Authority will provide greater accessibility from reduced legal costs and court fees, and improved access to justice for charities.</p>	

<b>3.4.1. Was the Ministry of Justice (MoJ) consulted about these provisions?</b>	<b>YES</b>
<p>Consultation with MoJ focused on the appeals framework and offences and penalties. The Department has incorporated MoJ’s feedback into the Bill.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>Clause 13 of the Bill amends section 24 of the Charities Act and allows for the charities register to contain any other information or documents provided by a charitable entity that supports the purpose of the register. This allows charities to provide additional information such as website and social media links for the register if they wish.</p> <p>Clause 14 of the Bill amends section 26 of the Charities Act to correct the register of honest and genuine mistakes or omissions by a charity. Occasionally, a charity may make a mistake in their application. The current Charities Act does not allow the Chief Executive to correct the charities register in these situations.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
<p>The Privacy Commissioner was not consulted because the changes are not likely to affect personal information.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Public consultation involved 27 community meetings and an online presentation between March and April 2019. The Department received 364 submissions from individuals and organisations. Public consultation covered the scope of the review, vision and policy principles, the purpose of the Charities Act, obligations of charities, the role of the regulator, the appeals framework, te ao Māori, charitable business, advocacy, and general feedback. The Department's Summary of submissions document (2019) can be found <a href="#">here</a>.</p> <p>Further consultation was conducted by the Department in 2021. Three rounds of targeted consultation with 52 stakeholders from the charitable sector occurred between May and September 2021. Stakeholders included a Core Reference Group, the Charities Sector Group, iwi, registered charities, academics, lawyers, and accountants. Targeted consultation covered reporting requirements for small charities, accumulation of funds by charities, regulatory decision-making and the appeals process, the regulator's compliance and enforcement powers, officers of charities and governance, and charities with business activities.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The Department's policy officials worked with the Charities Registration Board and Charities Services during the policy development process to seek data and evidence and ensure that the changes to the Bill are workable.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>The Charities Registration Board will have the power to disqualify an officer for a period not exceeding five years without needing to deregister the charity first – clause 17, section 36C of the Bill. The Charities Act currently requires the charity to be deregistered from the entity before disqualifying an officer for serious wrongdoing or significant or persistent breach of the Act. This allows the Board to remove an officer from the entity but allows the entity to remain registered as a charity.</p> <p>The Department's Chief Executive will have the power to exempt certain charitable entities from providing financial statements – clause 19, section 42AC of the Bill. The exemption power can be used if it supports the purposes of the Act. The threshold for exemption will be defined in regulations. Exempt charities will still be required to file an annual return containing minimum financial information.</p> <p>Charities will be able to appeal significant decisions of the Chief Executive to the Charities Review Authority, in addition to the existing appeal rights that allow all decisions of the Charities Registration Board to be appealed. The new decisions that can be appealed include decisions about removing or omitting information or documents from the register; changing a charity's balance date; granting, varying or revoking an exemption, and treating one or more affiliated or closely related entities as a single entity. This is provided for in clause 26, Part 2A of the Bill.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>The Minister for the Community and Voluntary Sector will have the power to make regulations prescribing the maximum financial thresholds that apply to exempting charitable entities from filing financial statements – clause 19, section 42AB of the Bill. Prescribing the threshold in regulations instead of the primary Act means the thresholds can be amended if there are changes to the reporting standards.</p> <p>Before recommending regulations, the Minister needs to consider the purposes of the Act. Once regulations are in place, the Department’s Chief Executive has discretion to exempt the charities from financial reporting, using the new exemption power at clause 19, section 42AC of the Bill.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 28 of the Bill amends section 73 of the Charities Act which provides for regulation-making powers. This allows regulations to be made for:</p> <ul style="list-style-type: none"><li>• defining entities that can qualify for an exemption to financial statements under new section 42AC;</li><li>• prescribing the basic financial information that the exempted charities will be required to file annually instead of financial statements;</li><li>• specifying the procedures for Charities Act appeals by the Charities Review Authority;</li><li>• prescribing fees for filing an appeal to the Charities Review Authority; and</li><li>• the refund, remit or waiver of fees paid for an appeal.</li></ul>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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