

The Charities Amendment Act 2023

Charity considerations in
relation to amendments



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The Charities Act 2005 (Act) has been amended by the Charities Amendment Act 2023 (Amendment Act) which came into force on 5 July 2023. There are three key dates on which changes come into force: **5 July 2023 | 5 October 2023 | 5 July 2024**.

The most significant changes to the operations of a charitable entity are those which come into effect on 5 October and are the focus of this summary.

This summary is intended to provide high-level information only and does not constitute advice. Please reach out to one of our experts if you require any assistance.

Item	Comments	Effective date
Role and definition of 'Officer'		
The role of an officer now includes a requirement to assist the charity to deliver its charitable purposes and to ensure the compliance with the charity's obligations under the Act or any other enactment. <i>(Section 36A of the Act)</i>		05 October 2023
The definition of 'officer' has been amended to capture all persons with significant influence over substantial decisions of the entity, regardless of the type of entity. <i>(Section 4 of the Act)</i>	<p>This amendment is in line with the approach taken in other legislation, such as the Incorporated Societies Act 2022 and is intended to ensure that people with influence over the decision-making and direction of a charity are deemed to be Officers.</p> <p>All persons (natural or corporate) who exert influence over the strategic, financial, or operational decisions of a charity should consider whether they or another person are likely to be captured by the updated definition and ensure they, or such other persons, are:</p> <ul style="list-style-type: none">properly identified;not disqualified from acting as officers; andlisted on the Charities Register. <p>The 'officer' definition update is particularly important for trusts. Prior to this amendment a trust's officers were exclusively the trustees of the trust. Officers of other charitable entities were already defined under the Act to include members of an entity's board or highest governing body, and all persons in a position to exercise a significant influence over the management or administration of the entity (such as a treasurer or chief executive).</p> <p>A trust's officers may now include any CEO, treasurer, CFO or other senior executive engaged by the trust, the directors/board members of a corporate trustee, and potentially anyone afforded decision making rights or powers under the trust's terms.</p> <p>No relevant regulations have yet been created under the Act</p>	05 October 2023

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Role and definition of 'Officer'		
<p>The Charities Registration Board will be empowered to disqualify an officer for 'serious wrongdoing' in relation to the entity or a significant or persistent failure to meet their obligations under the Act or any other enactment, without having to de-register the charity itself.</p> <p><i>(Section 36C of the Act)</i></p>	<p>'Serious wrongdoing' is defined in relation to an entity to include wrongdoing of the following types:</p> <ol style="list-style-type: none"> a. an unlawful or a corrupt use of the funds or resources of the entity; or b. an act, omission, or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate conduct of the affairs of the entity; or c. an act, omission, or course of conduct that constitutes an offence punishable by imprisonment for a term of 2 years or more or imprisonment for life*; or d. an act, omission, or course of conduct by a person that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement <p>* c. has been amended from any offence to one that is punishable by imprisonment for 2 or more years.</p>	05 October 2023
Governance of charities		
<p>All registered charities will be required to undertake a three-yearly review of their governance procedures.</p> <p>When conducting such a review the charity must consider whether its governance procedures-</p> <ol style="list-style-type: none"> a. are fit for purpose; b. assist the entity to achieve its charitable purpose; and c. assist the entity to comply with the requirements of the Act. <p><i>(Section 42G of the Act)</i></p>	<p>A registered charity can conduct its first review any time within the 3 year period from 5 October 2023.</p> <p>Charities should keep written records of each review and ensure each record covers the considerations set out in section 42G of the Act (i.e., (a) to (c) of the left column).</p> <p>An explanatory note to the Charities Amendment Bill records that this amendment promotes good governance and ensures that work towards achieving the charitable purpose is front of mind for officers of a charitable entity.</p>	05 October 2023
<p>There is now an explicit requirement for charities to operate in a way that maintains their qualification for registration.</p> <p><i>(Section 13A of the Act)</i></p>	<p>This means a registered charity must maintain charitable purposes and operate in a way that promotes those purposes, have qualified officers, and have rules that are compliant with that charity's governing legislation (i.e., the Incorporated Societies Act 2022, the Trusts Act 2019, and the Charitable Trusts Act 1957)</p>	05 October 2023

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Financial reporting requirements		
<p>The Department of Internal Affairs (DIA) has the power to exempt qualifying charitable entities from complying with the Act's financial reporting standards. Instead the qualifying charitable entity will only be required to provide an annual return containing 'minimum financial information' (as prescribed by regulations under the Act).</p> <p>(Sections 42AB and 42AC of the Act)</p>	<p>What constitutes a qualifying charitable entity and minimum financial information has not yet been specified in regulations under the Act.</p> <p>However, per the DIA's website as at 1 November 2022, the DIA stated its analysis suggested a threshold of annual payments under \$10,000 and total assets under \$30,000 that would benefit 12 percent of all registered charities.</p>	05 October 2023
<p>The Amendment Act aims to improve transparency in reporting of funds for larger charities. Charities Services has indicated that, in conjunction with the changes enacted by the Amendment Act, it will now require larger charities to report on the reasons for their accumulated funds (including cash, assets, and other resources).</p>	<p>This is not a legislative change and will be implemented through a change to the annual return form. Information on how to provide feedback on this proposed change can be found at the bottom of the table.</p>	TBC
Appeals framework		
<p>The Taxation Review Authority will be the authority to hear first appeals under the Charities Act instead of the High Court.</p> <p>(Section 58A of the Act)</p>	<p>The High Court will still function as an appeal court for decisions by the Taxation Review Authority.</p>	5 July 2024
<p>The range of decisions that can be appealed will include significant decisions made by Charities Services (as well as the existing decisions made by the Board). The timeframe for lodging an appeal will be extended from 20 working days to two months.</p> <p>(Sections 55A and 55B of the Act)</p>	<p>The DIA has stated that the reason for this change is to reduce charities' costs and make the appeals process less formal.</p>	5 July 2024

Upcoming consultation

The DIA is currently consulting on updates to the Charities Act registration application and annual return forms, with the consultation period scheduled to close on 24 October 2023. The proposed forms and online feedback form are available at [Charities Services | Consultation on form changes](#).

The proposed forms reflect the Amendment Act changes and charity financial reporting developments. They also seek to collect additional information from charities, including information regarding charities' accumulated funds and matters relevant to charities' eligibility to benefit from exemption from income tax and donation tax incentives.

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