

NOTICE OF DECISION – Charities Registration Board

18 December 2024

A. Purpose of this paper

This paper pursuant to section 32(1)(b) of the Charities Act 2005 (the Act) sets out the grounds the Board has relied on to remove NZ Edutech Trust Charity Registration Number CC 59481 (the Trust) from the Charities Register under section 31 of the Act, effective 18 December 2024.

The grounds relied on by the Board are that the Trust significantly and persistently failed to meet its obligations under the Act by not meeting the annual reporting obligations set out in section 41 of the Act, and by failing to respond to a notice to provide information under section 51 of the Act.

B. Background

The Department of Internal Affairs (the Department) reported to the Board as follows.

The Department initiated a review of the charitable purposes of the Trust after a complaint dated 17 May 2023 alleged that the Trust might not have been carrying out the range of activities it purports to undertake, despite allegedly receiving significant funding from Class 4 gaming operators.

The Trust has been registered as a charitable entity since October 2021. It filed an annual return for the year ended 31 March 2022 on 5 October 2023 (i.e. over a year late) but has not filed an annual return for the years ended 31 March 2023 or 31 March 2024. Under section 41 of the Act a registered charity must file an annual return within six months of its balance date (financial end of year). Accordingly, the Trust was and is in breach of its annual return filing obligations under the Act.

The financial reports that had been filed by the Trust with the Department did not show any funds received from gaming operators. Internet searches performed by the Department did not locate a website or a social media presence for the Trust.

The Department concluded that there was no information readily available to it suggesting that the Trust was actively carrying out its stated purposes and activities. The Department decided to issue a notice to the Trust under section 51 of the Act to require the Trust to supply further details to the Department about the Trust's activities and funding arrangements.

Such a notice may require any person (in this case, the Trust) to supply information in writing or documents thought necessary to carry out the Departmental functions under the Act. Once issued, this creates a duty to comply with the notice on the part of its recipient.¹ It is an offence to fail to comply with a section 51 notice² and any person who does so is liable on conviction to a fine of up to \$10,000.³

From 5 February 2024 to 4 March 2024, the Department sent notices issued under section 51 of the Act to the persons listed with the Department as, or advised by those persons to be, the Trust's primary contacts via the contact details supplied to the Department.

Two persons associated with the Trust were contacted by the Department during this time. Based on the information supplied to the Board by the Department in relation to these attempts, it appears that the Trust's primary contact details supplied by the Trust may have been out of date, or those details and/or roles were otherwise unclear within the Trust itself.

On 20 June 2024, the same notice was sent for the last time by the Department as a signature-required courier letter to the Trust's address for service as shown on the Charities Register. The Board was advised that during conversations with a person associated with the Trust a new due date to respond of 10 July 2024 was conveyed to the Trust.

However, the Trust did not subsequently respond to that notice, despite the Department again contacting both persons associated with the Trust it had previously spoken to and advising them of the Trust's obligation to respond to the notice.

The Board issued a Notice of Intended Decision to deregister the Trust on 11 October 2024. No objection to the Notice was received by the Board by the objection due date of 9 December 2024.

C. Grounds relied on by the Board

Failure to respond to a section 51 notice

The Department considers that the Trust significantly failed to meet its obligations under the Act by failing to respond to the section 51 notice.

A section 51 notice is an essential Departmental tool to monitor and where necessary investigate the activities of registered charities. The Trust's failure to respond has prevented the Department from obtaining the information it requires from the Trust to carry out its functions. Failure to comply with a section 51 notice is an offence under the Act, and is punishable by a fine of up to \$10,000 under section 52 of the Act.

¹ Section 52(1) of the Act.

² Section 52(1) of the Act.

³ Section 51 of the Charities Act 2005 (the Act), noting that power to issue the notice has been formally delegated by the Chief Executive to the relevant staff of the Department.

Failure to file annual returns

Under section 41 of the Act a registered charity must file an annual return within six months of its balance date (financial end of year). The Department reports that registered charities receive regular reminders to file their returns.

The Department reported that the Trust:

- a) has been registered as a charitable entity since October 2021. As such, the Trust has been required under section 41 of the Act to have prepared and filed annual returns with the Chief Executive of the Department since that date;
- b) filed an annual return for the year ended 31 March 2022. However, this was filed more than a year after the filing due date of 30 September 2022, being filed on 5 October 2023; and
- c) has not filed an annual return for the year ended 31 March 2023; and
- d) has not filed an annual return for the year ending 31 March 2024.

Under section 32(1)(b) of the Act, the Board may direct that an entity be removed from the Charities Register if there has been a significant or persistent failure by the entity to meet its obligations under the Act.⁴

In relation to the requirement to file annual returns under section 41 of the Act, the Board considers that it is evidence of a persistent failure to meet obligations under the Act where:

- an entity fails to file annual returns for two or more consecutive years; or
- there is a pattern of non-compliance in filing annual returns by the entity, and a present failure to file an annual return/s.

The Board notes that both tests have been met here.

D. Deregistration of the Trust

The Board issued a Notice of Intended Decision to deregister the Trust on 11 October 2024. No objection to the Notice was received by the Board by the objection due date of 9 December 2024.

Having received no objection from the Trust in the period set out in its notice the Board has directed that the Trust be removed from the Charities Register under section 32(1)(b) of the Act, effective 18 December 2024.

⁴ Section 32(1)(b) of the Act.