

# CHARITIES SERVICES

Ngā Ratonga Kaupapa Atawhai

# Charities Services Compliance Approach

This document sets out Charities Services' general approach to our compliance activities, the compliance tools we use in our work, and the possible outcomes of our compliance activities.



**Te Tari Taiwhenua**  
**Internal Affairs**



# Our vision

Our work contributes to a well-governed, transparent and thriving charitable sector that has strong public support.

# Our purpose and core functions

Charities Services' primary purposes are to:

- promote public trust and confidence in the charitable sector
- encourage and promote the effective use of charitable resources

To achieve these purposes, we carry out a range of regulatory functions that are set out in the Charities Act 2005:



Some of these functions – the registration and deregistration of charities – we perform under delegation from the independent Charities Registration Board.

# Modern, responsive, risk-based regulator

In fulfilling our functions, we take a modern, responsive, risk-based approach.

## Modern

We use technology to make it as easy as possible for the charitable sector to meet their obligations under the Charities Act 2005. Being a modern regulator is also about being innovative in our approach, and using information, data and intelligence to do our job better.

## Responsive

We need to understand the environment charities operate in, and what challenges they face. Our decisions need to be made carefully, considering this wider context, and the individual circumstances of the charity.

## Risk-based

We target our resources and compliance activities on the harms that impact on public trust and confidence in the sector. This means that we decide what engagement and compliance approach to take depending on our assessment of the nature and level of risk relating to the particular issue.

Our assessment of the nature and level of risk is influenced by a number of factors, which can include:

- ▶ what the issue is, and how serious it is
- ▶ whether the issue falls within our priority or focus risk areas (see below)
- ▶ the evidence of the issue, its source and its reliability
- ▶ the impact on public trust and confidence in the charity or wider charitable sector
- ▶ the impact on charitable resources and beneficiaries
- ▶ the profile, size and area of operation of the charity concerned
- ▶ how long the issue has been going on for, and whether it is ongoing or happened in the past

- ▶ the capacity, capability and willingness of the charity's officers to address the issue themselves, and the residual risk if they do not
- ▶ the charity's past compliance record

## **PRIORITY RISK AREAS**

**Significant or persistent non-compliance  
with requirements of the Charities Act  
2005**



**Serious mismanagement**



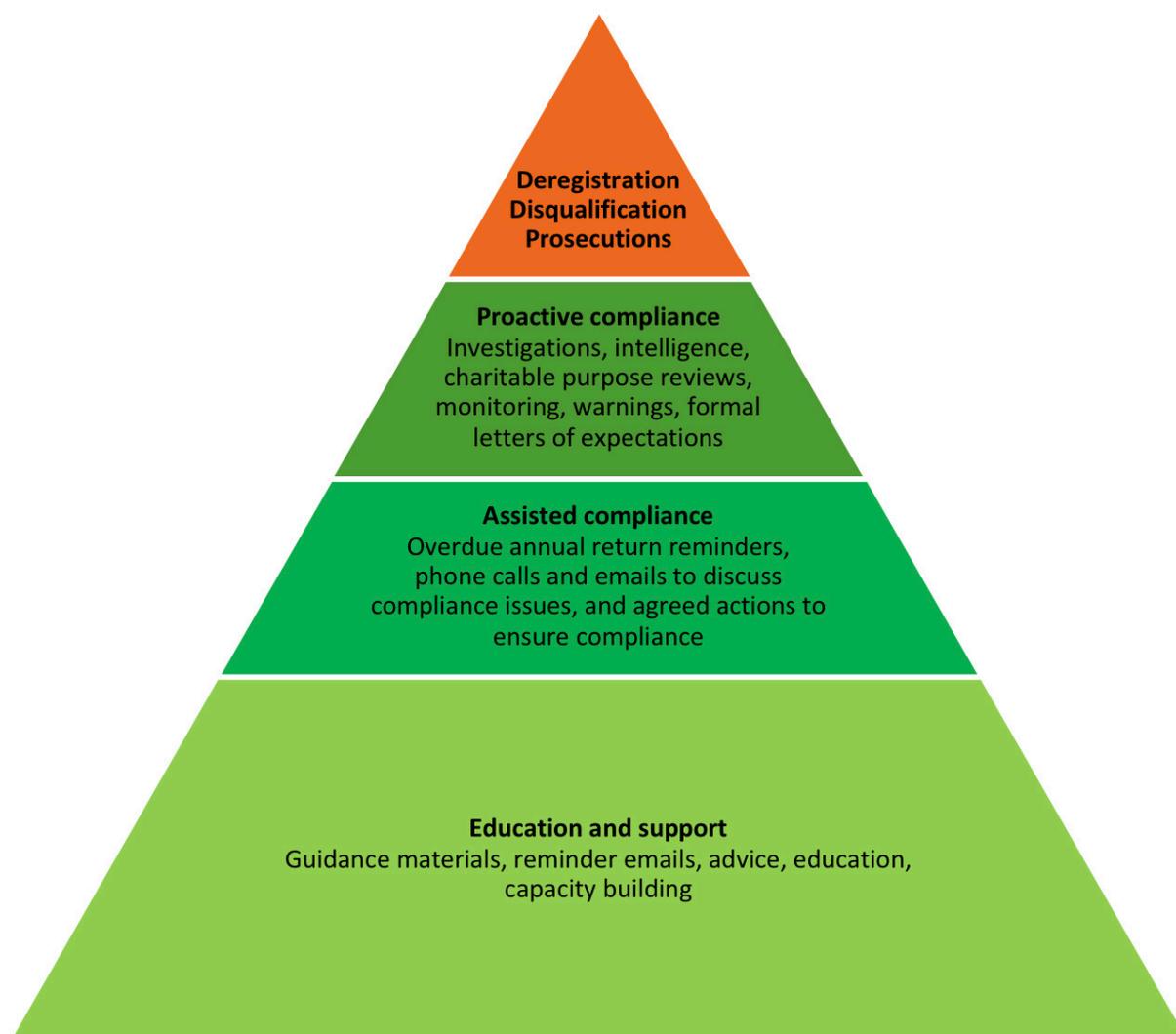
**Fraud and corrupt use of funds**



**Money laundering and the funding of  
terrorism**

# Approach to compliance

Much of our work involves providing information, support and guidance to help charities meet the requirements of the Charities Act 2005. This approach is reflected in the regulatory pyramid (below), which begins from a strong base of educating and informing the charitable sector.



Powers further up the pyramid are used in a way that reflects both the risks to public trust and confidence and the evidence of non-compliance. This means that in the more serious cases the appropriate action may be near the top.

# Charities Services' compliance tools

We become aware of instances of potential non-compliance through complaints, our own intelligence, media queries and referrals from government agencies.

We have broad powers in the Charities Act 2005 to examine and inquire into any registered charity, where this is reasonably necessary to carry out our functions and exercise our powers.

## Charitable purpose reviews

We can conduct reviews to determine whether a charity remains qualified for registration.

A charitable purpose review will only be undertaken where we consider that:

- ▶ this course of action is appropriate based on our assessment of the nature and level of the risk relating to the issue (as outlined above), and
- ▶ there is a good likelihood of a productive outcome (for example, where the law provides a degree of consistency or clarity about whether a particular purpose is charitable).

## Inquiries and investigations

An initial inquiry may be made to the charity, or other person or organisation, to request information or seek clarification about a specific concern. This helps us to decide whether to open an investigation. This initial inquiry may rely on voluntary disclosure of information, or our powers in section 51 of the Charities Act 2005 to require any person to supply documents or information.

An investigation will generally only be initiated where:

- ▶ our initial inquiries indicate possible serious or deliberate non-compliance with the provisions of the Charities Act 2005, and/or possible serious wrongdoing on the part of the charity or anyone connected with a charity; and
- ▶ an investigation is appropriate based on our assessment (as outlined above) of the nature and level of the risk relating to the issue or allegation.

## **Serious wrongdoing is defined in the Charities Act 2005 as:**

- ▶ **unlawful or corrupt use of a charity's funds or resources**
- ▶ **acts, omissions or conduct that constitute a serious risk to the public interest in the orderly and appropriate affairs of a charity**
- ▶ **acts, omissions or conduct that constitutes an offence**
- ▶ **conduct that is oppressive, improperly discriminatory, grossly negligent or that constitutes gross mismanagement**

If an inquiry or investigation uncovers concerns that need to be addressed, there are a range of possible outcomes. When choosing a particular outcome, we take into account a number of factors, including our assessment of the nature and level of the risk we are addressing (as outlined above) and whether another agency is best placed to respond.

In addition to the powers set out below, we can also provide guidance and advice on how to comply with the requirements of the Charities Act 2005, and support on how to address any issue identified through our compliance activities.

## **Formal letters of expectations**

Formal letters of expectations are used where:

- ▶ an inquiry or investigation uncovers issues of non-compliance or potential serious wrongdoing, and
- ▶ the charity concerned has put in place credible measures, or has taken sufficient actions, to address the concerns raised.

While this type of compliance tool is not prescribed in the Charities Act 2005, formal letters of expectation can be an effective way of dealing with issues that don't meet the threshold of serious wrongdoing, and/or where the charity has made a significant effort to remedy any issues that have been identified through an inquiry or investigation. They provide a formal record that we have required a charity to address certain issues, and set out our expectations going forward. We have a record of the letter that can be referred to in future. For example, if similar issues arise with the charity in future, then the charity can expect a stronger compliance response.

## **Warnings**

Warnings are used where a charity, or a person in connection with a charity, has breached the Charities Act 2005 or engaged in serious wrongdoing. They can also be used where a charity may no longer be qualified to be registered under the Act.

The purpose of a warning is to focus the charity on the actions that must be addressed, in particular to ensure compliance with the Charities Act 2005.

A warning notice will set out the reasons for the notice, and what actions the charity must take to address the issues we have identified. The warning will also set out what might happen if the charity does not comply with the notice within the specified timeframe.

Failure to address the issues highlighted in the warning can result in the Board publishing a notice summarising the issues and the action the Board has taken, or is considering taking, in relation to those issues.

## **Monitoring**

We can monitor a charity, either proactively or following on from an inquiry or investigation. We might do this to ensure that the charity is meeting its obligations under the Charities Act 2005, is not engaging in our priority risk areas or in serious wrongdoing. Monitoring can involve close analysis of a charity's financial statements, requests for information and open-source research.

## **Deregistration**

We can only deregister a charity on certain grounds – for example, if the charity is no longer qualified for registration, or because there has been a significant or persistent failure by the charity to meet its obligations under the Charities Act 2005.

Before a charity is deregistered, we first provide a formal notice that sets out the reasons for our intention to remove it from the register. The charity can object to its removal within the timeframe specified in the notice. Any objection will be considered by the Charities Registration Board before the Board makes a decision about the deregistration.

## **Disqualification of officers and entities**

The Charities Registration Board has the power to disqualify a person from being an officer of a charity, or order that an entity cannot re-apply for registration, for a specified period of time. These powers can only be exercised if the Board has first removed the charity from the register.

## **Prosecutions**

We can prosecute charities or officers for certain offences in the Charities Act 2005.

Prosecution is a deterrent and ensures that those who breach the law are held to account. Our prosecution decisions are made in accordance with the Department of Internal Affairs' Prosecution Policy and the Solicitor General's Prosecution Guidelines. In particular, before undertaking this action we need to be satisfied that prosecution is in the public interest, and there is a strong evidential basis to support this action.



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