



**Te Tari Taiwhenua
Internal Affairs**

15 August 2023

CHARITIES SERVICES
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C A Mattheiss

Sent via email to:

fyi-request-23549-3367e25c@requests.fyi.org.nz

Tēnā koe C A Mattheiss

Official Information Act 1982 Request – OIA 2324-0037

Thank you for your request for information about charity regulations, which was received by the Department of Internal Affairs (the Department) on the 20 July 2023.

You have requested the following:

- 1. Please inform me who is/was the legal person in 2012 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 2. Please inform me who is/was the legal person in 2013 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 3. Please inform me who is/was the legal person in 2014 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 4. Please inform me who is/was the legal person in 2015 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 5. Please inform me who is/was the legal person in 2016 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 6. Please inform me who is/was the legal person in 2017 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 7. Please inform me who is/was the legal person in 2018 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 8. Please inform me who is/was the legal person in 2019 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 9. Please inform me who is/was the legal person in 2020 overseeing charities at your government department. Please provide their full legal name, including middle name.*
- 10. Please inform me who is/was the legal person in 2021 overseeing charities at your government department. Please provide their full legal name, including middle name.*

11. *Please inform me who is/was the legal person in 2022 overseeing charities at your government department. Please provide their full legal name, including middle name.*
12. *Please inform me who is the legal person in 2023 overseeing charities at your government department. Please provide their full legal name, including middle name.*
13. *Please provide me with information about what the Prime Minister's role is in overseeing Charities Services and charities in New Zealand.*
14. *When did the Ministry of Economic Affairs merge with the Ministry of Business, Innovation and Employment?*
15. *Who oversees Charities Services at the minister level?*
16. *Who oversees Charities Services' operations?*
17. *How does Charities Services determine who is the successor of a charitable trust after the grantor of the trust has died?*
18. *Are there any areas on the form for registering a charitable trust that specify who the grantor is and the successor trustee who would take the grantor's place if they should die or not be capable of operating the trust?*
19. *How does Charities Services determine who the grantor of a trust is, meaning what titles are permitted to explain who the grantor of a charitable trust is on your website profile page for each charitable trust? For example, chairperson, treasurer, secretary, etc... Please be specific on all terms accepted.*
20. *Is it required by Charities Services or MBIE that the charitable trust's deed explain who the grantor is and who the trustee successor is at the time it is made?*
21. *How many legal persons are required to be trustees for a charitable trust for it to be considered legitimately in operation?*
22. *Are there any requirements by Charities Services for a legitimate trust to remain active?*
23. *How long can a trust remain inactive before it is not allowed to be registered anymore?*
24. *How long can a charitable trust remain inactive before it is deregistered?*
25. *How does Charities Services handle charitable trust registration forms?*
26. *Are the lawyers/barristers/brokers or accountants who sign off as registered Crown agents allowed by Charities Services to automatically administer charitable trusts once the trust becomes a trust estate?*
27. *Where on the charities registration form does it state or explain that a charitable trust is a type of will of the grantor making the trust?*
28. *When a charitable trust is registered and a lawyer/barrister/broker/accountant signs off on it to register it for the grantor of the trust are they automatically considered to be the administrator of the trust because they are a Crown agent and registered?*
29. *Are all names of trustees or chairpersons for a charitable trust to be legal names or can they be non-legal names?*
30. *Can alias names be used in place of legal names on charitable trust registration forms?*

31. *Can alias names be used in place of legal names on charitable trust deeds?*
32. *Can alias names be used in place of legal names on charitable trust rules?*
33. *Can you please inform me what 'charity financial irregularities' mean? Please provide your definition of financial irregularities.*
34. *Do you have any areas on the forms you require for a charitable trust to be made or on the trust deed that specifies what type of trust the charitable trust is supposed to be, such as a revocable trust, an irrevocable trust, an accumulative trust, or if it is to be a testamentary trust? Please explain in full detail.*
35. *If a trust is unable to fulfill its contract or deed, do you deregister the trust or do you allow it to continue to operate? If you allow it to continue to operate under what conditions is it allowed?*
36. *Are legal partners of a trust grantor, whether married, civil or de facto, required to be informed of any trust instrument being made that may affect their property or shared property with the grantor?*
37. *Does Charities Services take into consideration USA FATCA tax regulations and requirements which the New Zealand Government has agreed to abide by when it comes to USA citizens and their spouses, civil union partners or de facto partners who hold New Zealand citizen status that must abide by these tax laws regarding property or income/donations made for any trust of over \$10K? Please inform me of how Charities Services acknowledges this status and what they do by law to enforce FATCA laws when it comes to charities and USA citizens and spouses/partners of these citizens holding property in a charitable trust that may be legally considered shared property due to corpus and anima practices coming into place with the property as well as real property.*
38. *Is there any informed consent forms in place by Charities Services to inform those who are grantors making trusts that a trust is considered to be a will and also that a trust will supersede a will at the time it is made if there is no other will already in place? Please provide me with any forms required by law that inform grantors or partners/spouses of grantors that share this information.*
39. *What requirements by law are in place in New Zealand to inform alien spouses/legal partners of the charitable grantors making trust that their spouse or legal partner may be affected by a trust being made by them as well as their personal property? Are there any requirements by law that require the grantor to know this information? Are lawyers/barristers/accountants required by law to share this information with the grantor and the grantor's significant other before signing to make a trust before the trust is registered?*
40. *How often are trusts that remain inactive audited having no donations or income after 1 year?*
41. *Are Charitable Trust viewed as irrevocable once the grantor of the trust dies?*
42. *Once the charitable trust is irrevocable, does Charities Services allow the remaining trustees to change the status of other trustees by removing some trustees and adding others as they like?*
43. *How does Charities Services know who the trustee successor is for a registered charitable trust? Please clearly explain or provide forms if there are any available.*

44. Please provide Charities Services' definition of what an irrevocable charitable trust is once the grantor of the trust has died or becomes legally incapacitated.

It may be helpful for me to explain that Charities Services is responsible for maintaining the Charities Register and monitoring charitable organisations in New Zealand under the Charities Act 2005.

Charities Services is not involved in the set up or operation of charitable trusts, which is a legal form governed by the Trusts Act 2019 and registered with the Companies Office at the Ministry of Business, Innovation and Employment (MBIE). Charities Services and the Charities Register operate independently of the Companies Office and the Charitable Trusts Register. Further information about charitable trusts can be found on the Companies Office website: <https://ct-register.companiesoffice.govt.nz/help-centre/getting-started/about-charitable-trusts/>.

In general, charities are independent self-governing entities responsible for determining how they fulfil their charitable purposes, and otherwise meet their obligations as a registered charity. More information about the benefits and obligations of registration under the Charities Act 2005 can be found on our website: <https://www.charities.govt.nz/ready-to-register/benefits-and-obligations-of-registered-charities/benefits-and-obligations-of-being-registered/>.

Questions about the validity or legality of a trust are outside of Charities Services' area of responsibility. You may wish to seek independent legal advice on these matters.

Questions 1 to 12

The Chief Executive (CE) of the Department is the authority holder in the Charities Act 2005. I can advise that Colin MacDonald held the role of CE from April 2012 to August 2018 and Paul James is the current CE and has been in the role since October 2018.

Until July 2012, the Charities Commission was an independent agency. Trevor Garrett was the Chief Executive until 1 July 2012, when the Commission's functions became the responsibility of the Department of Internal Affairs and Te Rātā Atawhai, the independent Charities Registration Board.

The middle names have been withheld pursuant to section 9(2)(a) of the Official Information Act 1982 (the Act); the withholding of the information is necessary to protect the privacy of natural persons.

Question 13

The Prime Minister is the head of the New Zealand government. The Prime Minister and Ministers do not have any operational involvement in the regulation of charities. Any decision about registration or removal of a charity from the charities register is a decision for Te Rātā Atawhai, the independent Charities Registration Board (CRB).

Question 14

This portion of your request is refused pursuant to section 18(d) of the Act; that the information requested is publicly available. This information can be found on the Beehive website: <https://www.beehive.govt.nz/release/mbie-proceed-1-july>.

Question 15

Charities Services is part of the Community and Voluntary Sector portfolio. Hon Priyanca Radhakrishnan is the current Minister for the Community and Voluntary Sector.

Question 16

The General Manager Charities Services (currently Charlotte Stanley) oversees operational matters at Charities Services.

Question 17 and 18

Charities Services does not determine or have any mandate on who the successor of a charitable trust is after the grantor of the trust has died. This is a legal matter determined by the Trust deed and, in the case of a dispute, by the Courts.

Question 19

Charities Services does not determine who the grantor of a trust is. Charities Services accepts the officers of a charity through the certification by a current officer or person permitted to certify.

Further information can be found on our website here: <https://www.charities.govt.nz/im-a-registered-charity/officer-information/who-are-your-officers-and-what-do-they-do/>

Question 20

Charities Services requires that all current trustees of a trust be certified in order to qualify to be a registered charity.

Charities Services is unable to make comment on MBIE requirements. Please contact MBIE for this information. Please see our response to questions 17 and 18.

Question 21

Charities Services refers to the Trust Deed for this information. In general, Charitable Trusts may operate with as few as one officer. Please see our website for more information: <https://www.charities.govt.nz/im-a-registered-charity/officer-information/who-are-your-officers-and-what-do-they-do/>

Question 22 to 24

Charities Services considers that an entity that is inactive does not qualify for registration under section 13 of the Charities Act 2005. The Act provides that a trust qualifies for registration if it is a trust "in relation to which an amount of income is derived by the trustees in trust for charitable purposes." There are no provisions within the Charities Act 2005 on how long a trust can remain inactive.

Question 25

Charities Services receives registration applications either through our online portal or by paper forms. The forms are reviewed by Charities Support Team before being reviewed by the Registration Team. Please see our website for more information on registering as a charity: <https://www.charities.govt.nz/ready-to-register/need-to-know-to-register/>

Questions 26 – 28

Charities Services does not have, or endorse, Crown Agents. Charities Services registers and regulates charities under the Charities Act 2005 as noted above, but otherwise does not have any control of, or administer, charitable trusts. The registration form does not hold information regarding the type of Trust (i.e. if it is formed by will). You may wish to seek independent legal advice on these matters.

Questions 29 – 32

The names and details of officers are certified to be correct by an existing officer or person authorised by the charity. Questions about the validity or legality of a trust are outside of Charities Services' area of responsibility. You may wish to seek independent legal advice on these matters.

Question 33

Charities Services does not have a definition of "financial irregularities." However, in general we would refer to any financial accounts or processes not compliant with general accounting or the External Reporting Board reporting standards, or any unusual financial transactions.

Question 34

Charities Services does not collect this information or have any mandate to collect it.

Question 35

A trust that is a registered charity must advance exclusively charitable purposes. As part of its monitoring function, Charities Services may review charities to ensure that they continue to meet registration requirements. The Charities Registration Board may also direct that a charity be deregistered if the charity does not qualify for registration.

Question 36

Charities Services does not have any mandate in this area.

Question 37

Charities Services does not take USA tax regulations or any other foreign legislation or regulations into consideration and does not have any legal authority to enforce overseas legislation.

Question 38 and 39

Charities Services has no legal requirement to inform grantors or partners/spouses of grantors. We are unable to comment on other legal requirements by legal and accounting professionals and you may wish to seek independent legal advice.

Question 40

Please refer to our response to questions 20 – 22.

Questions 41 – 44

These are legal questions not within the mandate of Charities Services. You may wish to seek independent legal advice. In general, a charity may change its officers in line with its rules document and must notify Charities Services of these changes within 3 months.

You have the right to seek an investigation and review of my decisions about your request by the Ombudsman pursuant to section 28(1) of the Act. The Office of the Ombudsman can be contacted by writing to PO Box 10-152, Wellington or by email to info@ombudsman.parliament.nz.

Nāku noa, nā



Andrew Newbery
Manager Engagement and Business Improvement
Charities Services