

Modernising the Charities Act 2005

Submission form

Why you should have your say

We encourage any person or organisation interested in modernising the Charities Act 2005 (the Act) to submit a written response to the discussion document by using this form.

Your submission to the Department of Internal Affairs is crucial to help the Government consider improvements to the Act. Submissions received will inform policy development and government decisions.

The questions below are the same as the questions listed in the discussion document. We recommend reading the discussion document to understand the context surrounding each question before answering.

You are welcome to answer as many, or as few, questions as you wish. There is a space at the end for you to provide general comments about modernising the Act.

How to make a submission

Submissions can be posted to:

Charities Act Team
Policy Team
Department of Internal Affairs
PO Box 805
Wellington 6140



Submissions can also be emailed to:

charitiesact@dia.govt.nz



To read the discussion document or to find out more information about the modernisation work and community meetings, visit <https://www.dia.govt.nz/charitiesact>.

The closing date for submissions is **31 MAY 2019**

Submission details

Contact details:

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I am making this submission (please only check one box below):

<input type="checkbox"/> As an individual	<input checked="" type="checkbox"/> On behalf of the group or organisation listed above
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Please note:

The Department of Internal Affairs will analyse the information gathered from the submissions and use it to inform policy development. All submissions will be published to our website www.dia.govt.nz. This will include your name, or the name of your organisation, but not your contact details.

If you want your name or the name of your organisation removed, please let us know and we will remove your name before we publish your submission.

If there is information contained in your submission that you or your organisation do not want to be released, you need to make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. The Department will take your request into account.

The Privacy Act 1993 governs how the Department collects, holds, uses and discloses personal information about submitters. Submitters have the right to access and correct personal information.

When the review is completed, all documents (including submissions) will be kept by the Department.

Vision and policy principles – page 16 of discussion document



What are the key challenges facing the charities sector over the next ten years?

The charities sector is facing many challenges. These include but are not limited to:

- Sustainability

The ability for a charity to remain financially viable and continue to deliver on their charitable purpose will remain key. With dropping membership numbers and a corresponding drop in income, sustainability concerns are at the forefront of our and many other charitable organisations.

- Governance

The establishment of good governance practices is a challenge facing charities of all sizes. The limited resources of many charities create a challenging environment in which to establish and maintain a good governance structure.

- Public Trust

It is important to maintain the public's trust in charities. The public want to feel secure in the knowledge that funds given are being used in a way the donee would approve of. A large portion of this assurance is gained by having charitable status, the key challenge is to ensure that charities meet the requirements which come with this.

- Regulatory Burden

Charities place significant reliance on public support and in turn, need to demonstrate how well they have applied the resources made available to them. This is a justifiable requirement however the compliance requirements can become, particularly for smaller charities disproportionate and burdensome.



What are the key opportunities facing the charities sector over the next ten years?

With changing technology, we have the opportunity to reach and interact with more people in a greater variety of ways.



What is the role of government in achieving this vision?

The government should provide charities with an environment in which they have the freedom to flourish and focus on their objectives, but at the same time remain accountable to the public and transparent with their financial activities. It is the government's role to ensure that public trust is maintained. It needs to provide a regulatory framework which requires registration, information and disclosure, but does not interfere with or try to control the operation of a charity. There needs to be transparency and accountability in both the charities and regulator's activities

The government needs to provide a regulatory framework which is flexible and works for charities of all sizes. This framework needs to be accessible to all charities (via technology) and be achievable in terms of time and resources required to comply. This framework needs to be equitable and charities of similar size and nature should be treated consistently. .



Do you agree with the vision and policy principles described here?

Yes



Would you remove or change any part of the vision and policy principles?

No

The purpose of the Act – page 17 of discussion document



Do you agree with either of the two possibilities for additional purposes?

The discussion paper suggests two potential additional purposes for the Act. This assumes that the current purposes laid out in the legislation are generally accepted as fit for purpose. Before considering any additions, the review should commence with a re-examination of the overall purpose of the Charities Act regime. The way in which the current purpose of “promotion of public trust and confidence via the Charities Commission” has been interpreted has arguably led to over regulation. A considered re-framing of the overarching purpose of the Act could protect against undue interference with the role of the sector.



Are there any additional purposes you think should be added to section 3?

No. The regime was not intended to be used by government to control the charitable sector. Purposes such as “promoting the effective use of charitable resources” could be seen as regulatory overreach in the name of promoting public trust and confidence. Care needs to be given to ensure independence is protected and the purposes of the Act are not stretched too wide.

Obligations of charities – page 18 of discussion document



Why did your organisation register as a charity? For example, was the main reason public recognition, or to meet a funder's requirements, or tax benefits?

As an organisation we touch the community in many ways from providing spiritual guidance to community outreach and support. It was important for us to be recognised as a charity to maintain public confidence in the work that we do.

Taxation benefits have also been beneficial to our organisation and have allowed us to invest more funds back into our communities.



What benefits does your charity experience from being registered under the Act?

Charitable status is important to us in order to retain public confidence in the work we perform within the community. It is a "badge of respectability" and brings with it confidence that we are accountable and transparent in our activities

Our members are able to receive tax credits on donations.

Our churches do not pay income tax. This allows them to invest more funds back into their local community via community outreach programmes.

Reporting requirements



Is more support required for charities to meet their obligations? If so, what type of support is needed?

Many small charities struggle with complying with the current financial requirements of registering as a charity. The Tier 3 and 4 accounting obligations are often seen as too hard and costly. Charitie Services do assist in this area with resources on their website. We would recommend that the charities regulator look at collaborating with sector stakeholders (such as CAANZ and CPA Australia) to explore opportunities to develop and provide education and training.



Should reporting requirements for small charities be reduced? If so, what would be the benefits? What would be the risks?

Presently a Tier 4 small charity is required to comply with a simple, cash-based standard. This Standard is over 30 pages long, with another 46 pages of guidance. We recommend that the standard could be substantially simplified to a level that appropriately reflects the transparency and accountability required from this segment of the charities sector.

By simplifying the Tier 4 standard, the level of compliance by smaller charities would likely increase, in turn resulting in better transparency and enhanced public confidence.

Further compliance requirements should not be considered without first reviewing holistically all other compliance systems to which charities are subject in relation to the work of other government agencies.

Definition of an officer and qualifications



Should the definition of 'officer' be broadened for trusts that are registered charities?

Yes



Should someone with serious convictions be disqualified from being an officer of charity? If so, what kinds of convictions?

Yes – however, the Board should maintain its discretion to be able to waive a disqualifying factor for an officer of an entity in any particular case.

Accumulation of funds



Should charities be required to be more transparent about their strategy for accumulating funds and spending funds on charitable purposes (for example, through a reserves policy)? Why? Why not?

Charities should disclose the amount of reserves they have via a reserve note within their accounts. This should include details of funds set aside for a particular purpose as currently required for Tier 1 to 3.

It should not be a requirement for a charity to disclose their strategy for use of their funds but rather left to the individual charity to decide. The regulators role and purpose is oversight, not control of the choices of a charity. This proposal could also raise significant compliance and resourcing issues for our parishes.



Should certain kinds of charities be required to distribute a certain portion of their funds each year, like in Australia?

No. Charities should be left to distribute their funds at their own discretion. The role of the regulator is oversight, not control.

Governance standards



Do you think governance standards could help charities to be more effective? Why?

Yes. Ensuring that those in a governance position have standards to maintain would be beneficial.



Do you think the Australian governance standards could be adapted to work in New Zealand?

Yes

Alignment of other legislation



Should the Charities Registration Board continue to be bound to follow charitable purpose interpretations made by the Commissioner of Inland Revenue?

The review should examine the requirements of the Incorporated Societies Bill, the Trustees Bill and the need to review the Charitable Trusts Act. There is currently overlapping data collection, various identifiers for the same entity and different information for “officers” is required on different registers.

Role of the regulator – page 25 of discussion document

Strengthening connections between the regulator and the charities sector



How could the regulator be made more accessible to charities? For example, what would consultation requirements or an advisory board achieve?

The establishment of an independent advisory board would greatly strengthen the connection between the regulator and the charities sector. It would provide charities with the opportunity to be included in the decision-making process



Are the current accountability mechanisms for the Charities Registration Board and Charities Services (described above) adequate? How could accountability be improved?

No, it is difficult and expensive for charities to appeal any decision of the Registration Board, who often work on the recommendation of Charities Services. As part of a government department, this is not an independent body. Accountability would be improved by having charities administered by an independent body, which is not part of the government and having an advisory board established to provide guidance to the government on policy and further the interests of the charitable sector.

Strengthening registration decision-making



How could rules and processes for registration decision-making be improved?

There should be a tribunal which charities can appeal to for registration decisions. This tribunal would be independent of the government and easier and cheaper for charities to access.

Perceptions of independence



What is driving concerns over the independence of decision-making by the regulator?

The disestablishment of the Charities Commission has resulted in charities-related functions that are less accessible to the public, and charities sector work is being carried out less transparently. There is also no meaningful accountability of Charities Services to the charitable sector or the public. The Charities Act is now being administered by an agency which is part of a government department. The Department of Internal Affairs should not have a monopoly on providing advice to the Minister. An independent advisory board should be established to advise Government on policy and advance the interests of the charitable sector.



Would alternate structures or governance arrangements address any perceived lack of independence in decision-making?

Yes, the Charities Sector should be administered by an Autonomous Crown Entity.

Improving the charities register



How could the register be improved?

No comment

Powers when considering applications for registration, powers during an investigation, and enforcement powers



What additional powers, if any, should the regulator have when considering applications for registration? Why?

The Board's powers could be increased to allow them to decline to register or subsequently remove an organisation that provides false or misleading information, however there would need to be guidelines and boundaries around this.

A deregistered charity should need to show that it has addressed its issues when it applies to re-register.

The Board should also be able to back date a registration



What additional powers, if any, should the regulator have when carrying out an investigation? Why?

Consideration should be given to increase Charities Services powers during an investigation to allow them to direct a charity to suspend its operations or suspend any person involved in the charity being investigated, pending the outcome of the investigation. There would need to be transparency around these powers to ensure that they were not misused.



What additional enforcement powers, if any, should the regulator have? Why?

Charities Services should be given a wider range of enforcement powers such as being able to remove an officer. There could also be introduced a range of penalties for noncompliance rather than just deregistration.

The regulator's funding



Should charities pay fees to contribute to the regulation of the sector? Should fees be tiered?

No



Should a fee attach to registrations, as well as to filing annual returns?

No

Charities' use of third parties to fundraise



Do you think there is sufficient disclosure of the use of third party fundraisers by charities and the cost? If not, how could greater disclosure be ensured?

Yes

Appeal of regulator decisions – page 34 of discussion document

Decisions subject to appeal

? Which decisions made by Charities Services should be subject to appeal? Why?

Charities need to be able to appeal ALL decisions made under the Charities Act, not just those relating to registration and de-registration.

? Should the Act provide for internal review of Charities Services decisions?

Yes

Party to appeals

? Should the decision-maker, or anyone else, be a party in appeal cases? Why?

Yes, the current process limits the appeal process and the development of charitable case law.

? Should the Attorney-General, as protector of charities, automatically be named as a party to an appeal?

Yes, the Attorney General should be involved in Charities Act litigation as the protector of charities. It is important to look after the definition of charitable purpose and ensure that this is developed correctly.

Hearing new evidence, and how to hear the appeal

? Should it be easier to bring new evidence on appeal?

Yes

? Should the appeal be heard as a re-hearing (with no oral hearing of evidence), or as a de novo hearing (with evidence heard orally)?

Appeals should be heard as a de novo hearing. Charities need to be able to access an oral hearing of evidence.

Time limit for lodging appeals, and appropriate body to hear appeals



What do you consider to be an appropriate time-frame for lodging appeals? Why?

60 days



What body is most appropriate to hear appeals on registration decisions: the High Court, District Court, or another body?

The cost of appeals to the high court is too expensive for most charities. A specialist Charity Tribunal could be set up to hear cases, with a right of appeal to a higher court. There is also a case for test case litigation funding to assist charities in meeting the cost of litigation.

Other approaches to enable the law on 'charitable purpose' to develop



What other mechanisms (for example support for test cases) could be used to ensure that case law continues to develop?

No comment

Te Ao Māori – page 38 of discussion document



What is working for Māori charities under the Act? What is not?

No comment



Are there any issues under the Act that impact Māori charities differently to other charities?

No comment



Are you aware of cases where an iwi settlement organisation has limited its activity because of its charitable status?

No comment



Should the Act be more flexible for iwi settlement organisations that are charities? If so, how?

No comment



Are you aware of any particular problems with the reporting requirements for Māori charities?

No comment

Business – page 41 of discussion document



What should be the registration requirements for unrelated businesses?

Under New Zealand law, charities can run businesses to raise funds for their charitable purposes: the question is not how the funds are raised, rather that all funds raised must always be destined for charitable purposes.

A charities ability to raise funds for their charitable purpose and to become self-sustaining, including running businesses, should be protected and supported.



How should charities report on their business operations and business subsidiaries?

Current reporting standards require charities to complete consolidated accounts. This is sufficient.



Should charities be required to report separately on business subsidiaries that they control that are not registered charities? If so, why?

No. It is important to remember that Charities Services is there to provide an information and disclosure regime not control how a charity operates.



What, if any, restrictions (such as the 'significant risk' test in England and Wales) should exist on the level of risk for charities undertaking business activities?

None. This is regulatory over reach. Under New Zealand law charities can run business to raise funds for their charitable purposes: The question is not how the funds are raised but rather that all funds raised must always be destined for charitable purposes.



What should be the requirements of charities to manage conflicts of interest when undertaking business activities?

Charities should require a robust conflict of interest policy and rules expressly preventing officers from acting when conflicted, as do for-profit companies.

Advocacy – page 46 of discussion document



Are you aware of charities that are reluctant to advocate for changes to law and policy that would further their charitable purposes? Why are they reluctant to do so?

Some charities would be reluctant to advocate for law changes due to the fear of losing their charitable status.



How should the public benefit of organisations that advocate for their causes be assessed?

Advocacy is an important and legitimate part of charities role and a sign of a healthy democracy; seeking peaceful orderly change is itself in the public interest in a participative democracy like New Zealand. Advocacy is an activity, not a purpose. The question with respect to advocacy is whether it is carried out in furtherance of the charities stated charitable purposes. If it is, then there is no difficulty. This is the law in New Zealand and it should be applied by Charities Services.



What would an advisory board (as in Australia) add to the regulator's decision-making on the registration of charities that advocate? Are there any other ways to help improve the regulator's decision-making?

No comment



Should there be limits on advocacy by charities? If so, what should those be?

Charities should not engage in partisan political activity, other than that, they should be able to advocate what they like.



Would you like to see greater freedom for charities to advocate for policy or law change? What would be the benefits? What would be the risks?

Yes.

General comments



Do you have any other comments to make about modernising the Act?

The time frame for this report is too short and does not allow time for the careful consideration required to ensure that we end up with an Act which works for all. In addition, many issues are not being covered in this review, i.e. the definition of Charitable Purpose and regulation of the broader not for profit sector.

Charities are independent entities that are intended to exist into perpetuity. It is for charities to determine how best to further their stated charitable purposes, and they should be able to do so free from undue government interference.