

29 May 2019

Charities Act Team
Policy Group
Department of Internal Affairs
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By email: charitiesact@dia.govt.nz

SUBMISSION on “Modernising the Charities Act 2005” Discussion Document

1. Introduction

Thank you for the opportunity to make a submission on the “Modernising the Charities Act 2005” Discussion Document. This submission is from Consumer NZ, New Zealand’s leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Answers to questions

Our answers to specific questions are set out below.

Vision and policy principles: What are the key challenges facing the charities sector over the next ten years?

New Zealand charities make a significant contribution to societal well-being and many provide important services to their communities. Many also play a significant role in public policy processes, representing community interests and helping to ensure better outcomes for New Zealanders.

However, limited government-funding means charities must compete for public donations to support their work. At the same time as competition for donations is increasing, charities are facing rising operational costs, driven largely by rent and wages. These costs will continue to place pressure on the sector’s limited resources and capacity to deliver services.

What is the role of government in achieving this vision?

The government has a major role in supporting a sustainable charities sector. Financial pressures on the sector would be eased by increasing government support for charities delivering essential services. We consider participation funding should also be provided to support groups taking part in public policy processes, helping to ensure better representation of and outcomes for the public.

The purpose of the Act: Do you agree with either of the two possibilities for additional purposes?

Yes, we support the two additional purposes proposed on page 17.

Obligations of charities: 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?

Consumer NZ is an independent, not-for-profit organisation that works to protect and empower consumers. Charitable status provides recognition of this role.

The tax exemptions provided by registration also ensure we can maximise the benefits we provide to consumers from the funding we receive.

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

The key benefits of registration are outlined above.

An additional benefit of registration is the ability to access discounts, which are offered by some companies (e.g., NZ Post) to organisations working in the charity sector.

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

Yes, more support is required for charities to meet their obligations.

Charities Services' data indicate smaller charities, particularly tier 3 and 4 charities, are struggling with reporting requirements.

Many charities are likely to benefit from support to help upskill staff (regardless of the size of the organisation). Recent IPSAS changes have required charities to invest time and money to meet requirements.

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

We consider providing assistance to small charities to meet their reporting requirements would be a better option. Given smaller charities often rely heavily on volunteers, additional support would be of particular value for these groups.

If a decision is made to reduce requirements for tier 4 charities, any changes should not be at the expense of transparency and accountability.

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

Yes, we would support broadening the definition of "officer" for trusts registered as charities.

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

Consideration should be given to aligning these clauses with the equivalent clauses of the exposure draft of the Incorporated Societies Bill.

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 be transparent about their strategy for accumulating funds.

There are legitimate reasons for charities to set aside funds. However, they should be able to clearly identify the reasons for doing so in their public reporting.

We note the concerns raised in the discussion paper about accumulation of funds by charities with businesses and by private foundations. As the case study on p22 illustrates, this can result in very little money being distributed for the stated charitable purpose.

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

We suggest further research be done on this issue and the likely effects of adopting requirements similar to those in Australia.

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

In view of the significant public good role played by the charitable sector, we consider regulation should be funded by central government.

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?

In our view, there is not sufficient disclosure of the use of third-party fundraisers by charities. Consumers have the right to know how much of their donation is going to a third-party and how much is going to the charity.

Tactics used by on-street fundraisers soliciting donations on behalf of charities have been a cause of complaint to our office. Consumers may be unaware the person soliciting the donation does not work for the charity or that a proportion of their money goes to a commercial fundraising company.

We supported amendments to the Fair Trading Act allowing regulations that would require third-party fundraisers to disclose information about costs. We are disappointed these provisions have not been used.

In the interests of maintaining public trust and confidence in the charity sector, we consider charities need to be upfront about their use of third-party fundraisers. In other

jurisdictions, information about the use of professional fundraisers is required to be disclosed.

For example, in the US we understand large charities have to report their fundraising expenses – including any fees paid to professional fundraisers – as well as provide a detailed breakdown of all other costs.

We consider similar requirements would improve the regulation of charities here.

Appeal of regulator decisions: Which decisions made by Charities Services should be subject to appeal? Why?

In our view, charities should be able to appeal all decisions of the charities regulator, whether they are decisions made by the board, or the chief executive and whether relating to registration, de-registration or otherwise. This would result in greater accountability for decision-making.

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

Yes, the Attorney-General, as protector of charities, should automatically be named as a party to an appeal.

Should it be easier to bring new evidence on appeal?

Yes, it should be easier to bring new evidence on appeal.

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 de novo. We agree with the views of the Law Commission (in its review of Incorporated Societies) that the principles of natural justice may require oral hearings in some circumstances.

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

In our view, the current 20-day time limit is not sufficient. We consider a longer timeframe is required. A 60-day timeframe would be more appropriate.

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

We consider a tribunal, presided over by a judge, would be the most appropriate body to hear appeals on registration decisions.

Requiring charities to appeal through the court system is costly and time consuming. A more user-friendly system is required to speed up the process and minimise costs.

Advocacy: 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?

We agree the law on charities and advocacy is complex and confusing, even following the Supreme Court decision in *Re Greenpeace*.

We consider engaging in policy debates to be an important and legitimate part of our, and other charities', work. However, if charities are threatened with losing their status simply because they advocate, this will have a chilling effect on debate.

Charities' right to advocate in furtherance of their charitable purposes should be protected. In Australia, a charity can promote or oppose a change to any matter of law, policy or practice, as long as this advocacy furthers or aids another charitable purpose. In our view, a similar approach should be adopted in New Zealand.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue Chetwin', with a stylized flourish at the end.

Sue Chetwin
Chief Executive