# Modernising the Charities Act 2005Submission 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:

|  |  |
| --- | --- |
| Name: |  |
| Organisation (If applicable): |  |
| Role (if applicable): |  |
| Address: |  |
| Email: |  |

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

|  |  |
| --- | --- |
| [ ]  As an individual | [ ]  On behalf of the group or organisation listed above |

### 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](http://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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

What is the role of government in achieving this vision?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

## The purpose of the Act – page 17 of discussion document

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

## 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

### Reporting requirements

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

### Definition of an officer and qualifications

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

### 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

### Governance standards

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

### 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?

|  |
| --- |
|  |

## 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### Strengthening registration decision-making

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

|  |
| --- |
|  |

#### Perceptions of independence

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### Improving the charities register

How could the register be improved?

|  |
| --- |
|  |

#### 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### The regulator’s funding

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### 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?

|  |
| --- |
|  |

## 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### Party to appeals

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### Hearing new evidence, and how to hear the appeal

Should it 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)?

|  |
| --- |
|  |

#### 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

#### 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?

|  |
| --- |
|  |

## Te Ao Māori – page 38 of discussion document

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

## Business – page 41 of discussion document

What should be the registration requirements for unrelated businesses?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

## 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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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?

|  |
| --- |
|  |

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

|  |
| --- |
|  |

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?

|  |
| --- |
|  |

## General comments

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

|  |
| --- |
|  |