Foreword

Tēnā koutou katoa

Charities play a vital role in supporting people and communities throughout New Zealand.

More than 27,000 registered charities assist Kiwis in diverse areas including the arts, community development, education, emergency services, environment, health, housing, marae, religion, social services, and sport. These charities are supported by more than 230,000 volunteers and 180,000 paid staff.

Now is the opportunity to take stock of how the Charities Act 2005 is operating, and how the world has changed since the Act came into force. It is a chance to explore how the Act could better enable charities to have a positive impact on their communities. Modernising the Act is my top priority as Minister for the Community and Voluntary Sector.

An Act that is working well for charities, the regulator, and the public will help ensure that the charities sector is as effective as possible and enjoys the trust and confidence of the public.

This discussion document seeks your feedback on how the Act is working at present and what could be improved. I urge everyone with an interest in the work of charities to get involved and have their say. Your views and feedback during this process are essential to ensuring the best outcomes for communities around New Zealand.

Ngā mihi

Hon Peeni Henare
Minister for the Community and Voluntary Sector
Contents

Foreword  

Contents

Executive summary

How to have your say

Why modernise the Act, and what do we want to achieve?

Key issues

What is not within scope?

What happens next?

How to have your say

What happens next?

Publishing submissions

Snapshot of the charities sector in New Zealand

Charities in numbers

An overview of the Charities Act 2005

‘Regulator’

Context for modernising the Act

Background

Scope

Out of scope issues

Other work occurring at the same time

Vision and policy principles

The purpose of the Act

Potential additional purposes

Obligations of charities

Introduction

Current situation

What are the issues?

Role of the Regulator

Introduction

Current situation

What are the issues?

Charities’ use of third parties to fundraise
# Appeal of regulator decisions

- Introduction 34
- Current situation 34
- What are the issues? 35

# Te Ao Māori

- Introduction 38
- Current situation 38
- What are the issues? 39

# Business

- Introduction 41
- Current situation 41
- What are the issues? 43

# Advocacy

- Introduction 46
- Current situation 46
- What are the issues? 49

# Appendix: Questions to submit on

51
Executive summary

This summary explains how to have your say on modernising the Charities Act 2005 (the Act), the reasons for modernising, and key issues we want your feedback on.

Your submission is crucial to help the Government consider how to improve the Act.

How to have your say

Submissions close on 30 April 2019. You can submit by email or post.

The Appendix at page 51 lists all of the questions contained in this document by topic. You can answer as many, or as few, questions as you like in your submission.

A downloadable submission form is available at www.dia.govt.nz/charitiesact.

Find out more on page 8 of this document.

Why modernise the Act, and what do we want to achieve?

The Act provides a registration, reporting and monitoring system for charities.

Modernising the Act is about ensuring the Act is fit for purpose and suits the different needs of New Zealand’s diverse charities sector.

A well-designed and effective Act will contribute to a thriving and sustainable charities sector where:

- New Zealanders understand, trust, and have confidence in charities;
- charities have the capability and capacity to effectively deliver on their charitable purposes, and New Zealanders benefit as a result; and
- the expertise and independent voice of charities helps inform the policies and services that affect the communities they work with.

Find out more on pages 13 to 16 of this document.

Key issues

Current and future focus: what’s needed for the Act to work for a diverse sector?

More than 27,000 registered charities contribute enormously to our communities. Many provide education, counselling or religious services, while others make grants, maintain marae, provide communities facilities, or carry out other diverse activities.

Charities in New Zealand spend around $17 billion annually, manage $58 billion in total assets, and are supported by more than 230,000 volunteers and 180,000 paid staff.

Registration provides exemptions from income tax. Some small charities receive little or no tax benefits from registration, but other non-tax benefits can be important (such as public recognition that donating to a charity benefits the community).

We want to hear:
- Why did your organisation register as a charity?
- What benefits does your charity experience from being registered under the Act?
- What are the key challenges and opportunities facing the charities sector over the next ten years?

Find out more on pages 16 to 18 of this document.

Obligations: are current requirements for remaining on the register working?

Charities’ obligations need to be clear and manageable but also strong enough to ensure the public have trust and confidence in the sector.

All charities must maintain their charitable purposes, file an annual return, and tell the regulator if they change their key personnel or rules.

Some charities may accumulate considerable funds (or other assets) over many years. There may be good reasons for this, like managing and growing a charity’s assets for current and future generations. In other cases, a charity may accumulate funds over many years with no clear rationale.
We want to know:

- Is more support required for charities to meet their obligations? If so, what type of support is needed?
- Should charities be required to be more transparent about their strategy for accumulating funds and spending funds on charitable purposes?

Find out more on pages 18 to 24 of this document.

**Regulator: does the regulator have the right functions and powers?**

The regulator comprises two bodies: the Charities Registration Board (the Board) made up of three members, and Charities Services (a business group within the Department of Internal Affairs).

The Board makes decisions to register or deregister charities. Charities Services gives educational support and advice to charities, maintains the charities register, and monitors and promotes compliance. Charities Services also makes decisions to register or deregister charities under delegation from the Board.

We are interested in better understanding a perception that current arrangements may not ensure independent decision-making. Independent registration decisions are crucial to the system’s integrity.

We want your views on matters such as:

- How could the regulator be made more accessible to charities? For example, what would consultation requirements or an advisory board achieve?
- What is driving concerns over the independence of decision-making by the regulator?

Find out more on pages 25 to 33 of this document.

**Appeals: how can the process to appeal decisions be improved?**

The ability to appeal registration decisions is important to help develop charities law and hold decision-makers to account.

Currently, a person can appeal to the High Court from a Board decision (including decisions that Charities Services makes under delegation from the Board). High Court appeals can be costly, and few appeals are made each year.

An ongoing sector concern is that any decision made under the Act – not just registration and deregistration decisions – should be subject to appeal.

We seek your views on how the appeal process is working, and how to improve it, including:

- Which decisions made by Charities Services should be subject to appeal? Why?
- What body is most appropriate to hear appeals?

Find out more on pages 34 to 37 of this document.

**Te Ao Māori: how can the Act work better for Māori charities and Māori communities?**

The Act should help to support the aspirations of Māori communities and enable the Crown to fulfil its obligations as a Treaty partner.

Māori charities are a diverse and significant part of the charities sector providing benefits to Māori and the wider public. Māori charities range from large iwi settlement organisations to small rural marae.

We want your views on what is working for Māori under the Act and what is not, including:

- Are there any issues under the Act that impact Māori charities differently to other charities?
- Does charitable status limit the activities of iwi settlement organisations?
- Are there particular problems with reporting for Māori charities?

Find out more on pages 38 to 40 of this document.
Business: how can the risks of charities operating businesses to raise funds be managed?

Businesses can be an important income source for charities. Businesses can also put charitable funds at risk because the charity may not get back the money used to support the business.

Charities may run ‘unrelated businesses’, where the service or product does not directly contribute to a charitable purpose (e.g. food and drink retailers, hotels). The test is whether income from those business activities is ultimately applied to charitable purposes.

The Act should enable charities to raise funds to support their work, while providing certainty that charities are only undertaking business activities to further charitable purposes and no individual is profiting.

We want to hear your views on:
- What should be the registration requirements for ‘unrelated businesses’?
- How should charities report on their business operations and business subsidiaries?

Find out more on pages 41 to 45 of this document.

Advocacy: should there be limits on advocacy by charities?

‘Advocacy’ is about working to change, or stop changes, to law and government policy. It also includes promoting points of view on issues in society.

Advocacy can be a legitimate and important way for charities to achieve their charitable purposes. However, there is a lack of clarity on when charities can engage in advocacy.

We want to hear your views on:
- Should there be limits on advocacy by charities?
- 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?

Find out more on pages 46 to 50 of this document.

What is not within scope?

This modernisation work is not looking at the following matters:
- operational matters;
- the definition of ‘charitable purpose’, (section 5(1) of the Act), which will continue to be based on court judgments;
- tax exemptions for charities registered under the Act;
- regulation of the broader not-for-profit sector; and
- contracting arrangements for government services.

What happens next?

Attend a community meeting

The Department of Internal Affairs will be hosting 21 community meetings throughout the country between 6 March and 18 April 2019 about modernising the Charities Act. Attend a community meeting to hear about the modernisation work and discuss it with the Department and charities sector representatives.

Register to attend a community meeting in your area at www.dia.govt.nz/charitiesact.

Make a written submission

To have your say, make a written submission by 30 April 2019.

Your submission will inform policy development and government decisions.
How to have your say

Your submissions are crucial to help the Government consider improvements to the Act. This discussion document outlines issues within key themes and asks focused questions, so that we can understand your views and experiences.

Download a submission form from www.dia.govt.nz/charitiesact (or use the ‘Appendix: Questions to submit on’ at the back of this document as a guide). Send your submission by:

- email to charitiesact@dia.govt.nz
- or by post to:
  Charities Act Team
  Policy Group
  Department of Internal Affairs
  PO Box 805
  Wellington 6140

If you have any questions or want more information about the modernisation work or submissions process, please visit www.dia.govt.nz/charitiesact or email charitiesact@dia.govt.nz.

What happens next?

Submissions received will inform policy development and government decisions. If Cabinet agrees, a new law (a Bill) will be introduced to Parliament later in 2019, and a Select Committee will invite public comments on specific proposals. Some issues may be addressed through non-legislative change.

Publishing submissions

We will publish all submissions on www.dia.govt.nz. This will include your name, or the name of your organisation, unless you ask for this to be withheld. Your contact details will not be published.

If there is information in your submission that you do not want released, please make this clear and explain why. For example, some information may be confidential because it is commercially sensitive or personal. The Department of Internal Affairs (the Department) will take your request into account.

Under the Privacy Act 1993, submitters have the right to access and correct personal information. When the modernisation work is completed, all documents (including submissions) will be kept by the Department.
Snapshot of the charities sector in New Zealand

Charities make an enormous contribution to New Zealand society, through wide-ranging activities. Many provide services such as education, counselling or religious services. Others make grants, provide facilities, or carry out diverse activities like community patrols, toy libraries or conservation projects.

The size of charities ranges from large tertiary education institutions to small, grass-roots community groups. Some – like the Plunket Society, SPCA, and St John – are household names. Charities form part of the broader not-for-profit sector comprising more than 114,000 organisations that include ethnic associations, Lions Clubs, chambers of commerce and residents’ associations.

The public supports the charities sector by volunteering and donating money and other resources. New Zealand’s rates of volunteering and donations to charities are high when compared to other countries.\(^1\) Public trust and confidence improves when charities are open about how they use their funds and the public can see the positive difference charities make. Knowing that charities are registered and regulated also drives public trust and confidence.\(^2\)

Charitable status is granted to organisations that exist for certain purposes and that meet certain requirements. Trusts, incorporated societies, limited liability companies, cooperatives, and unincorporated groups may all be registered charities.

This modernisation work is concerned with registered charities. That is, organisations that are registered under the Act. We recognise that some organisations may choose not to register, and still call themselves charities if they further charitable purposes.

Charities in numbers

There are approximately 27,000 registered charities in New Zealand.\(^3\) They are spread throughout the country. Table 1 shows that more than 14,000 charities are based near our biggest cities: Auckland (7,088), Waikato/Bay of Plenty (3,952), Wellington/ Wairarapa (3,878), and Canterbury (3,477).

Table 1: Numbers of charities per region

<table>
<thead>
<tr>
<th>Region</th>
<th>Number of charities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northland</td>
<td>1075</td>
</tr>
<tr>
<td>Auckland</td>
<td>7088</td>
</tr>
<tr>
<td>Bay of Plenty</td>
<td>1826</td>
</tr>
<tr>
<td>Waikato</td>
<td>2126</td>
</tr>
<tr>
<td>Gisborne</td>
<td>330</td>
</tr>
<tr>
<td>Hawkes Bay</td>
<td>901</td>
</tr>
<tr>
<td>Taranaki</td>
<td>662</td>
</tr>
<tr>
<td>Manawatu/Wanganui</td>
<td>842</td>
</tr>
<tr>
<td>Wellington/Wairarapa</td>
<td>3878</td>
</tr>
<tr>
<td>Nelson/Marlborough/Tasman</td>
<td>974</td>
</tr>
<tr>
<td>Canterbury</td>
<td>3477</td>
</tr>
<tr>
<td>West Coast</td>
<td>244</td>
</tr>
<tr>
<td>Otago</td>
<td>1705</td>
</tr>
<tr>
<td>Southland</td>
<td>811</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>25,939</strong></td>
</tr>
</tbody>
</table>

The sector employs more than 93,300 full-time and 90,000 part-time staff. Nearly three quarters of charities (about 19,800) have no full-time employees. Just over 2,000 have one full-time employee. Charities are also supported by around 230,000 regular volunteers.

---

3. This figure is sourced from the charities register. Some information in this document, like the number of charities per region, is sourced from annual returns provided to Charities Services. Totalling the number of charities from annual return figures will vary from the total on the charities register for reasons such as a charity not filing a return, or filing one return on behalf of a group of charities. For example, the number of charities per region in table 1 totals 25,939 charities, rather than 27,000 charities.
The combined total income of registered charities is around $18 billion per annum, with $17 billion total expenditure. They manage $58 billion in total assets.

Table 2 shows the percentage of charities within four reporting tiers. This indicates the majority of registered charities are small, though a few very large charities account for half the sector’s annual turnover.

Table 2: Expenditure of charities broken into reporting tiers

<table>
<thead>
<tr>
<th>Reporting tier (based on expenditure)</th>
<th>% of number of charities</th>
<th>Number of charities</th>
<th>% of total annual sector expenditure</th>
<th>Total annual expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than $30m (tier 1)</td>
<td>0.7%</td>
<td>163</td>
<td>51%</td>
<td>$8.67b</td>
</tr>
<tr>
<td>$2m to $30m (tier 2)</td>
<td>5.7%</td>
<td>1,360</td>
<td>29%</td>
<td>$4.93b</td>
</tr>
<tr>
<td>$125,000 to $2m (tier 3)</td>
<td>35.6%</td>
<td>8,493</td>
<td>11%</td>
<td>$1.87b</td>
</tr>
<tr>
<td>Less than $125,000 (tier 4)</td>
<td>58%</td>
<td>13,838</td>
<td>9%</td>
<td>$1.53b</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>23,845</td>
<td>100%</td>
<td>$17b</td>
</tr>
</tbody>
</table>

Figure 1 shows the largest proportion of charities carry out education, training and research (21%), followed by religious activities (18%). Charities that support arts, culture and heritage are the third most common (9%). The remainder of charities cover everything from environment and conservation, to social services.

Figure 1: Main sectors of registered charities
Case study: Paralympics New Zealand

Paralympics New Zealand (PNZ) is the National Paralympic Committee for New Zealand with a vision of 'Excellence & Equity through Sport'.

As a member of the International Paralympic Committee, PNZ is part of a worldwide social change movement which uses the power of sport to positively influence community perceptions of disabled people and promote a more diverse and inclusive society.

PNZ supports and celebrates the achievements of Para athletes at international and national competitions all year round. Every two years, PNZ leads New Zealand teams to the Paralympic Games. PNZ also works in the local community to advocate for sport to become more accessible for disabled people and support the creation of more systems and programmes to enable participation in Para sport.

On the evening of Saturday 13th April 1968, the New Zealand Federation of Paraplegic and Physically Disabled Associations was formed. Having a national body, today known as Paralympics New Zealand, meant that New Zealand was for the first time able to send Para athletes to a Paralympic Games. In November 1968, a team of 16 Para athletes travelled to Israel, with Eve Rimmer bringing home four medals from the Tel Aviv 1968 Paralympic Games.

These days, PNZ supports and encourages opportunities for disabled people to participate in Para sports, from regional, national, and international levels. At a national level, PNZ works with regional ParaFed organisations to deliver a range of disability sport and recreation programmes, helping disabled people build skills and make community connections. At an international level, PNZ assists elite Para athletes to compete at the Paralympic Games and other key international pinnacle events. A total of 209 Paralympians have represented New Zealand to date.

Source: Paralympics New Zealand
**An overview of the Charities Act 2005**

Charities are independent, self-governing entities that bring people together to benefit the public. Like everyone, charities are subject to law.

The Act was passed in 2005, and amended in 2012. Prior to the Act, there was no register of charities and no consistent information about their activities and funding. The 2005 Act established a registration, reporting and monitoring framework, to ensure that ‘those entities receiving tax relief continue to carry out charitable purposes and provide a clear public benefit’.\(^4\)

The Act does not set rules for everything that charities do. Rather, it provides a framework of provisions that seek to promote public trust and confidence in charities.

An independent board, with responsibility for registering and deregistering charities, was established following the Act’s amendment in 2012. Also, the chief executive of the Department was empowered with certain functions (performed by Charities Services), such as educating charities about good governance and management, and monitoring compliance with the Act.

The Act sets out requirements for registration, and outlines duties for charities. These include preparing annual returns, and notifying the Department of particular changes, for example, a change in board membership, or a change to the charity’s rules or purposes.

The reporting and disclosure requirements ensure reliable information is accessible on the register about how charities further their charitable purposes. Among other things, this helps the public make informed decisions about which charities to support with donations or volunteered time.

Other provisions in the Act detail how functions, duties, and powers should be carried out, such as the process the Board must follow if an organisation is to be removed from the register.

The Act is not the only legislation that impacts charities. Charities’ tax benefits and obligations come from the Income Tax Act 2007 and other tax legislation, for example.

**‘Regulator’**

The term ‘regulator’ is used in this document to refer to the bodies that collectively regulate matters under the Act. These bodies currently are:

- the Charities Registration Board (the Board);
- Charities Services (the business group within the Department which delivers the chief executive’s functions - as explained in the Role of the regulator chapter).

The equivalent bodies in Australia and the United Kingdom also describe themselves as regulators.

To some people, the term ‘regulator’ may suggest a strict approach to compliance and enforcement. This is not what we intend to convey. The term ‘regulator’ or ‘regulatory agency’ is a broad term used widely across government to refer to agencies which, among other things, monitor and administer a regulatory system.\(^5\) Regulatory approaches vary considerably according to the nature of the system.

---


\(^5\) See for example Treasury, Government expectations for good regulatory practice (April 2017): “a regulatory agency is any agency (other than courts, tribunals and other independent appeal bodies) that has any of the following responsibilities for the whole or part of a regulatory system: monitoring; evaluation; performance reporting; policy advice; policy and operational design; legislative design; implementation; administration; information provision; standard-setting; licensing and approvals; or compliance and enforcement.”
Context for modernising the Act

Background
In May 2018, the Government announced it would review the Act. The aim is to ensure the Act is effective and fit-for-purpose, with sufficient flexibility to suit the needs of diverse charities.

The charities sector has consistently called for a review ever since the Act was passed. The Act passed in 2005, following more than 700 public submissions on the 2004 Bill and significant alterations during the select committee process. Consultation on the revised Bill was limited, and the Bill moved through its final parliamentary stages under urgency.

In 2010, the former Minister for the Community and Voluntary Sector began an intended ‘first principles’ review of the Act. However, in 2011, the incoming Government disestablished the Charities Commission, transferring its functions to the Department of Internal Affairs and an independent Charities Registration Board. Cabinet decided in 2012 not to continue with a review, as the new regulatory regime was still bedding in.

There has been significant change since the Act was passed 14 years ago. This includes changes in charities’ wider operating environment (for example, increasing pressure on volunteers and growth in innovative fundraising methods), the move to a Board, the introduction of financial reporting standards for charities, and new tax obligations for deregistered charities. More broadly, the Crown-Māori relationship is maturing as the number of Treaty settlements grows.

It is timely, therefore, to consider the Act’s operations. This means looking at how well the Act is working for charities, recipients of charitable support, volunteers, donors, the Government, and all others with an interest. The Act needs to work for everyone.

Case study: One Percent Collective

In 2012, One Percent Collective formed to simplify regular giving. It is a registered charity that exists to inspire generosity so that charities can spend more time working on impact and innovation, and less time on fundraising.

Donors set up regular payments – often just 1% of their income – to one or more of the 14 partner charities through One Percent Collective’s website. It’s about making a big difference through lots of people contributing small amounts.

One Percent Collective takes care of the advertising and publicity, leaving the partner charities to focus on the issues they exist to solve. The partner charities are all New Zealand-based with charitable purposes ranging from providing quality food to vulnerable people to protecting the environment. They are small to medium charities with annual expenditure below $500,000 when they first join the Collective, and they must adhere to One Percent Collective’s values of being “open, human, and real”.

One Percent Collective itself is funded by the Future 50 – a group of 50 individuals and local businesses donating $20 a week to fund core expenses. Corporate sponsors help fund the rest of the operating costs which means that the partner charities receive 100% of the money donated specifically to them. Since its establishment, One Percent Collective has raised over $1 million and currently has over 500 donors.

One Percent Collective puts huge effort into sharing stories on what the partner charities do with their donations. This includes monthly feature stories, interviews with staff and volunteers, and regular profiles of donors. One Percent Collective holds annual Generosity Sessions to further encourage meaningful connection between donors and charity staff and volunteers. Plus you may have seen their Generosity Journal publication, which helps them reach new audiences through print.

Source: One Percent Collective
Scope
The Government considers the fundamentals of the legislative regime are proving to be sound. These include:

- provision for the registration of charities;
- the voluntary nature of registration;
- public access to information about charities; and
- the obligation on charities to file annual returns with financial statements.

Nevertheless, the sector has raised various issues with the current state. These range from ‘big picture’ issues, such as the independence of the Board, to operational issues, such as the reporting standards. The regulator has also identified areas to improve, such as appeal mechanisms.

The terms of reference define the structure and scope of the modernisation work. Following initial information gathering and sector conversations, we have identified various substantive issues which we seek feedback on:

- Can we improve on the purposes of the Act?
- Are the duties and obligations placed on charities too onerous or too light touch?
- Could the accessibility or content of the charities register be improved?
- Do current regulatory arrangements protect the sector’s independence, and strike the right balance of support versus compliance?
- Could current mechanisms for the appeal of registration decisions be improved?
- How well is the Act working for Māori charities and Māori communities?
- What limits, if any, should exist on charities running businesses or advocating for their views?

The following chapters broadly reflect the order of these questions. This list is not necessarily exhaustive and we welcome feedback on other elements of the Act. We also welcome your views on what is working well. The full terms of reference for the modernisation work, and other related documents, can be found at [www.dia.govt.nz/charitiesact](http://www.dia.govt.nz/charitiesact).

Out of scope issues
The following matters are outside scope:

- operational issues, that is how Charities Services does its job;
- the definition of ‘charitable purpose’ (section 5(1) of the Act), which will continue to be based on court judgments;
- tax exemptions for registered charities;
- regulation of the broader not-for-profit sector; and
- contracting arrangements for charities delivering government services.

Other work occurring at the same time
Independent Tax Working Group
The Tax Working Group (the TWG - [https://taxworkinggroup.govt.nz/](https://taxworkinggroup.govt.nz/)) is an independent body established by the Government to examine further improvements in the structure, fairness and balance of the tax system. The TWG considered the tax
treatment of charities as part of its work. The TWG’s final report was publicly released on 21 February 2019.

Tax exemptions for registered charities are not within the scope of the work to modernise the Charities Act. However, some issues noted by the TWG have been picked up, for example, the issues around accumulation of funds by charities.

**Incorporated Societies Bill**
Many charities are incorporated societies, and will be impacted by upcoming changes to incorporated societies legislation. Public comment on an Incorporated Societies Bill was sought over 2015 and 2016. An Incorporated Societies Bill is expected to progress through the parliamentary process in 2019.

**Trusts Bill**
Many charities are trusts. The Trusts Bill seeks to replace the Trustee Act 1956 and the Perpetuities Act 1964. It has three main purposes: to set out clear and accessible trust principles, to ensure more efficient administration of trusts, and to clarify and simplify the role of the courts. As of February 2019, the Trusts Bill is awaiting its second reading.

**Other**
Other work underway (for example the Welfare Expert Advisory Group’s review of the welfare system), also forms part of the broader context in which the modernisation of the Charities Act is occurring.
Vision and policy principles

An effective, healthy charities sector contributes to building resilient and cohesive communities and improving living conditions for all New Zealanders.

Charities can support New Zealanders’ wellbeing in many ways – for instance, through work to protect our natural environment; enhance people’s skills, knowledge and health; and provide community facilities. The sector enables participation, builds bonds within and between communities, and supports intergenerational wellbeing.

Given the foundation provided to the wider legislative frameworks by the Treaty of Waitangi, the Act must reflect the Crown-Māori relationship. This is continually evolving as historical grievances are settled. The Act should support these relationships into the future.

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?

A well designed and effective Act will contribute to a thriving and sustainable charities sector where:

- New Zealanders understand, trust, and have confidence in charities;
- charities have the capability and capacity to deliver effectively on their charitable purposes, and New Zealanders benefit as a result; and
- the expertise and independent voice of charities helps inform the policies and services that affect the communities they work with.

What is the role of government in achieving this vision?

In considering any changes to the current legislative regime, we will think about any measures in terms of these policy principles.

- Certainty – the objectives of the Act, the obligations of charities and the functions and powers of the regulator should be clear.
- Transparency and accountability – both charities and the regulator must be accountable to the public.
- Flexibility – the regulatory framework must work for charities of all different sizes and purposes and adapt to future technology and circumstances.
- Proportionality – the obligations placed on charities, and the regulator’s response to non-compliance, should reflect the potential risk to charitable funds or public trust in the charities sector.
- Cost-effectiveness – obligations on charities should be no more onerous and costly than necessary, and the cost of regulating the regime should be reasonable.
- Equity – charities in similar situations should be treated consistently, including in their access to appeal decisions that affect them.
- Alignment – the Act’s regime should align as much as possible with other legislative regimes (including international frameworks).

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

Most modern Acts have a purpose section which ‘sets the scene’ and clearly conveys the high-level outcomes each Act seeks to achieve. All the functions, powers and duties in the remainder of the Act are interpreted in light of the Act’s purpose section.

Section 3 states the purpose of the Act is to:

- promote public trust and confidence in the charities sector;
- encourage and promote the effective use of charitable resources;
- provide for the registration of societies, institutions, and trustees of trusts as charitable entities;
- require charitable entities and certain other persons to comply with certain obligations;
- provide for the Board to make decisions about the registration and deregistration of charitable entities and to meet requirements imposed in relation to those functions; and
- provide for the chief executive to carry out functions under the Act and to meet requirements imposed in relation to those functions.

Potential additional purposes

We are interested in your feedback on the following two possibilities for additional purposes.

**To support and sustain a robust, vibrant, independent, and innovative charities sector**

This purpose would emphasise the government’s commitment to supporting charities to achieve their purposes through the Act’s framework. It is similar to the objective of the Australian Charities and Not-For-Profits Commission Act 2012, section 15-5(1)(b).

**To promote the transparency of the charities sector to donors, volunteers, beneficiaries and the public**

Transparency is a key concept underlying the Act, through the publicly accessible register of charities, and reporting obligations on charities. This purpose would emphasise the importance of transparency to donors, volunteers, beneficiaries and the public.

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

Introduction
This section seeks your views on charities’ obligations under the current legislative framework.

Organisations must meet certain obligations to qualify for and maintain charitable status. These obligations ensure the register has sufficient rigour and scrutiny to support trust and confidence in charities. Ultimately, non-compliance can lead to charities being removed from the register.

The obligations need to be clear, so that charities understand what is expected. Obligations must also be manageable, so they do not get in the way of charities carrying out their work.

Registration as a charity provides exemptions from income tax. Charities may also receive donee status, which means individuals who donate to those charities may be able to claim a tax credit, and companies and Māori authorities may be able to claim a deduction. Charities may also receive exemptions from resident withholding tax and fringe benefit tax.

Registered charities receive other benefits from government. For example, the New Zealand Police grant a fee waiver for vetting staff and volunteers. Some local authorities give rent reductions, rates exemptions, or rates rebates to registered charities.

Some small charities receive little or no tax benefit from registration, but registration provides other benefits such as public status and credibility. Some funders will only consider applications from registered charities. Many businesses also offer discounts or donated goods and services to registered charities.

Current situation
Under section 13 of the Act, to qualify for registration, an organisation must:

- if it is a trust, have income derived by the trustees in trust for charitable purposes;
- if it is a society or an institution, be established and maintained exclusively for charitable purposes, and not be carried on for the private profit of any individual;
- have a name that is not misleading or offensive;
- have officers (key personnel such as trustees, board members, and senior leadership) that are qualified to be officers of a charity (for example, they must be over 16, not be an undischarged bankrupt, and not have been convicted of certain crimes involving dishonesty); and
- have a rules document.

The Act has no specific provisions for overseas organisations seeking to register as a charity in New Zealand. However, Charities Services requires a charity to be either established in New Zealand or have a very strong connection to New Zealand.

To remain on the register, a charity must meet certain duties, such as notifying Charities Services of changes to its name or address, officers, rules or purposes (section 40). Charities also have reporting requirements, detailed below.

Requirements associated with maintaining registration

Maintaining charitable purpose
If a charity changes its rules or purposes, it must notify Charities Services. These changes are reviewed to ensure the charity still meets the requirements for registration.

6 The proposed changes in the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill require that organisations with charitable purposes must be registered charities in order to obtain donee status.

7 Around 1,900 registered charities reported less than $1,000 in total gross income and received less than $100 in donations in their most recent financial year.
If the charity’s purposes are no longer charitable, Charities Services may work with the charity to help them stay registered, for example advising on proposed changes to the wording of purposes in their rules document. If the charity takes no action to amend its purposes, Charities Services may recommend that the Board deregister the charity.

**Annual reporting**
Charities must file an annual return form and accompanying performance report within six months after the financial year end. The performance report (which includes financial statements) allows charities to ‘tell their story’ for the past year: why they exist, what they did over the last year, how much this cost, and how it was funded.

Information in these documents can be searched on the publicly accessible charities register, unless it is withheld in the public interest (under section 25). Data from annual returns helps government, funders and the public understand the charities sector, for example, by showing the number and types of charities in a particular region.

**Financial reporting requirements**
The new financial reporting standards came into effect on 1 April 2015. This followed a review of the quality of charities’ annual reporting in 2009 by the then Ministry of Economic Development. The review identified problems with charities’ financial statements, including widely varying formats and accounting approaches, and concerns with the completeness and quality of information reported.

To address these issues, the Act was changed in 2013.¹ The changes required charities to prepare annual financial statements in line with standards that the External Reporting Board (XRB) consulted on and issued.² The standards provide a consistent approach to reporting. This is important for accountability, since all charities can receive donations from the public.

Requirements are tiered according to the size of the charity. The terms are generally based on the charity’s annual expenditure over the previous two financial years (see Figure 2). Larger charities have more rigorous reporting requirements.

**Figure 2: Tiered reporting standards for charities based on annual expenditure³**

<table>
<thead>
<tr>
<th>Tier 1</th>
<th>Tier 2</th>
<th>Tier 3</th>
<th>Tier 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $30 million annual expenses or has public accountability</td>
<td>Under $30 million annual expenses without public accountability</td>
<td>Under $2 million annual expenses without public accountability</td>
<td>Under $125,000 annual operating payments without public accountability</td>
</tr>
</tbody>
</table>

The vast majority (94%) of registered charities use the simplified tier 3 (accrual) and tier 4 (cash) standards. These charities must prepare performance reports, including both financial and non-financial information (such as the charity’s mission or purpose, and what services they delivered). Templates and guidance notes are provided.

A comprehensive suite of tier 1 and tier 2 standards apply to the preparation of financial statements by large charities.

Charities’ financial reports indicate how well they are financially placed, in terms of what they owe and own. Notes can be included, such as about transactions involving the transfer of money, goods and services between the charity and those who are closely associated with, and have the ability to influence, the charity.

---

¹ Financial Reporting (Amendment to Other Enactments) Act 2013.
³ This figure also refers to ‘public accountability’. Paragraphs 7-13 of XRB Accounting Standard XRB A1 define ‘public accountability’ for financial reporting purposes and includes, for example, entities that have issued debt or equity securities in a public market.
Audit and review requirements
Charities with operating expenditure over $500,000 must have their performance report or financial statements audited or reviewed by a qualified auditor. Charities with annual operating expenditure over $1 million must have their performance report or financial statements audited by a qualified auditor.

Support provided to charities in meeting their obligations
Following introduction of the reporting standards, Charities Services, XRB, and others worked to raise awareness of the new requirements and to help charities comply. This involved workshops throughout the country, webinars, other online resources, and responses to questions. These efforts have focused on supporting charities that report under the tier 3 and 4 standards.

Many accountants also contribute significantly to charities, freely giving their time and skills. Many are treasurers and board members, or provide audit and assurance services, to not-for-profit groups.

What are the issues?
We would like to hear your feedback on the requirements and duties of charities. Some issues we are aware of are below.

Many small charities struggle to meet reporting requirements
Charities Services data shows that in 2018, 100% of tier 1 charities, 91% of tier 2 charities, 81% of tier 3 charities, and 58% of tier 4 charities successfully met the minimum reporting requirements.

While this is an improvement on previous years, many small charities are struggling to meet requirements. On average, only about 50% of charities (of all sizes) file their returns on time.

A charity’s ability to meet its financial reporting obligations depends on both the complexity of the obligations, and the skill and knowledge of that charity’s people: volunteers, managers and board members.

Tier 4 charities are the most likely to rely on volunteers who may be time poor, or less familiar with obligations than paid staff in large charities. Governance boards of tier 4 charities often face similar barriers. It may be that small charities need more support and advice, or need to build their own capacity to meet the reporting standards.

Some have proposed that a new ‘micro entity’ tier be created for charities with $10,000 or less operating expenditure. These charities would not need to comply with the current XRB reporting standards. For example, they would instead complete a fill-in-the-box financial statement form annually, containing minimum financial information (without non-financial information). Alternatively, tier 4 charities could be required only to file an annual return (without accompanying performance reports or financial statements).

However, reducing reporting requirements for small charities also has some downsides. For example, an annual return form could be inflexible and not a good fit for all small charities. In addition, removing the non-financial information about what a charity has done in a year will not allow the charity to tell its story to the public.

Definition of an officer
Responsibility for filing annual returns, and notifying Charities Services of key changes, rests with the charity. The charity’s officers are responsible for ensuring these duties are met.

The definition of an officer depends on the legal

structure of a charity. If the charity is a trust, the Act (section 4) indicates that the officers are the trustees. For all other legal structures, the officers are members of the board or governing body, and all people in positions of significant influence over the entity’s management or administration (for example, a treasurer or chief executive).

Because officers in trusts are more narrowly defined, not everyone with significant influence over the management or administration may be captured. For example, in some trusts, trustees may delegate some of their powers to committees or boards. Those committee members are not captured by the Act’s current definition of ‘officer’.

Some trusts have corporate trustees (for example, a company) rather than natural person trustees. The current definition of ‘officer’ does not include the officers of those corporate trustees although they may play a significant role in the operation of a trust.

In Australia, the ‘responsible persons’ of a trust includes the directors of any corporate trustees.

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

Qualification of officers

One of the registration requirements is that all officers of the entity must be ‘qualified’. Under section 16, officers are disqualified if they have been convicted and sentenced for a crime involving dishonesty within the last seven years. These offences cover theft, burglary, robbery, obtaining by deception, money laundering, receiving, accessing computer systems for dishonest purposes, forgery, and (recently) tax evasion.

The Board has discretion to waive a disqualifying factor for an officer of an entity in any particular case. This provides flexibility to allow persons who would otherwise be disqualified to be officers in appropriate situations. For example, charities, specifically established to support current and former inmates, may benefit from officers with past experience of prison.

Currently, individuals with serious convictions (including serious drug offences, murder, and sexual violation) can be officers of registered charities.

Nothing in the Act disqualifies them, even in cases of charities that work with vulnerable people.

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

Accumulation of funds

Generally, charities need to set aside funds to deal with both expected and unexpected events. For example, charities need to have funds to cover an unexpected drop in income.

Some charities may accumulate considerable funds (or other assets) over many years. There are often good reasons for this. For instance, a charity may accumulate funds:

- for a specific purpose, like a new community facility, by fundraising over a long period;
- to grow a charity’s own business so that it can provide future income for the charity, by putting business income back into the business; or
- to ensure the charity can provide benefits to current and future generations, by managing and growing a charity’s assets (including iwi and hapū charities that hold settlement assets).

In other cases, a charity may accumulate funds over many years with no clear rationale. While charities must use their funds for charitable purposes, the Act does not limit the funds a charity can accumulate before doing so.

Tier 1-3 charities must report annually on the funds they have accumulated over their lives. Tier 1-3 charities also need to state their reserves – funds set aside for a particular purpose – and must describe the restrictions or purposes for their reserves. Tier 4 charities do not need to report on the funds they have accumulated over their lives but must report on the amount of cash they have and other resources they own.

Holding accumulated funds without clear explanation may cause public concern that a charity is not using its funds for charitable purposes. For example, concerns have been raised regarding charities with businesses that apply very little or no
Modernising the Charities Act 2005: Discussion document

funds to charitable purposes. Accumulating funds in a business or other investment over a long time can increase the risk that charitable funds are lost if it fails (see chapter on charities and business).

Case study: Charity (accumulation of funds by a business)

A charity group is made up of a trust that owns six related companies. The companies provide goods and services for the building industry. The charitable purpose of the trust is to provide grants for charitable purposes in the community.

Over the past 10 years, the companies have provided on average $2.5 million in income to the trust annually.

At the same time, the group’s assets have grown from $30 million to $90 million. The trust has used accumulated funds and taken out loans to purchase $30 million in property. The property is rented by the six subsidiary companies.

The trust makes charitable grants of $100,000 annually on average. That is about 4% of its income and less than 1% of its total assets.

In this case, there has been large growth in assets over a long period and a relatively small amount distributed in grants. So far, most of the accumulation of funds by the trust has not advanced the charitable purposes of the trust.

It is not only charities that operate businesses that have issues with large accumulation of funds. For example, the TWG’s interim report raised concerns about accumulation by private foundations. Financial information on the charities register indicates the largest 25 to 30 foundations established by single donors or their families have total assets exceeding $1.7 billion. The TWG reported that the average proportion of net surplus by private foundations distributed over this three-year period varies widely, from 10% to 92%.

Other countries take different approaches to this issue. In England and Wales, all charities must include in their annual report their policy on reserves, stating the level of reserves held and why they are held. The charity needs to state if it does not have a reserves policy.

In Canada, charities are required to spend a minimum amount each year on their own ‘charitable programmes’ or on gifts to other charities.

In Australia, private foundations that are registered private ancillary funds need to meet specific rules. If a private ancillary fund is a charity, it is required to have a minimum annual distribution of 5% of assets to charitable organisations.

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

Some of the issues described above, including the accumulation of funds, could be addressed through the introduction of governance standards for charities. In Australia, charities must meet core, minimum governance standards that require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way. The standards set out high-level principles, not precise rules, so there is flexibility in terms of how charities can comply.

Case study: Australian governance standards

Standard 1: Purpose and not-for-profit nature

Australian charities must be not-for-profit and work towards their charitable purpose. They


must be able to demonstrate this and provide information about their purposes to the public.

**Standard 2: Accountability to members**
Australian charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.

**Standard 3: Compliance with Australian laws**
Australian charities must not commit a serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units (A$10,200) or more.

**Standard 4: Suitability of Responsible Persons**
Australian charities must take reasonable steps to be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the Corporations Act 2001 or disqualified from being a responsible person of a registered charity by the Commissioner for the Australian Charities and Not-for-profits Commission, and remove any responsible person who does not meet these requirements.

**Standard 5: Duties of Responsible Persons**
Australian charities must take reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in the standard (including acting with reasonable care and diligence, acting honestly in the best interests of the charity and for its purposes, not misusing their position as a responsible person, disclosing conflicts of interest, and ensuring that the charity’s financial affairs are managed responsibly).¹⁴

---

Act. Ideally, the requirements of different legislative regimes should align as much as possible.

Of the registered charities in New Zealand:

- 3.5% are subject to the Companies Act 1993;
- 25% are subject to the Incorporated Societies Act 1908;
- 38% are subject to the Charitable Trusts Act 1957; and
- most of the remainder are unincorporated societies and trusts.

Charities are also subject to more general legislation such as the Employment Relations Act 2000 and the Health and Safety at Work Act 2015. As noted earlier, charities’ tax benefits and obligations come from the Income Tax Act 2007 and other tax legislation.


The Tax Administration Act 1994 allows the Commissioner of Inland Revenue to make binding rulings on how taxation law applies to income derived by, or for the benefit of, charities. The Income Tax Act 2007 provides tax concessions for entities that carry out charitable purposes.

Under section 13 of the Charities Act, the Board is required to follow any binding ruling by Inland Revenue when deciding if an organisation meets registration requirements for charitable purposes. It is possible that the Board will be bound to follow an interpretation of charitable purpose that it does not agree with.

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

Introduction
This section focuses on the role and activities of the regulator in administering the Act’s registration, reporting, and monitoring framework.

The term ‘regulator’ describes an agency with responsibilities for a regulatory system such as monitoring, administration, information provision, licensing, compliance, and enforcement.

We are interested in your views of how well current arrangements are working to promote public trust and confidence in the charities sector, and to encourage the effective use of charitable resources.

Specifically, this chapter seeks your views on:
- the role and functions of the regulator;
- the accountability of the regulator;
- processes for registration and deregistration decisions;
- compliance functions and tools; and
- other issues, such as the regulator’s education function, and funding.

Current situation
Under the Act, regulatory functions are split between two bodies: the Charities Registration Board (the Board) and Charities Services (a business group within the Department of Internal Affairs). Below we describe their respective responsibilities.

Having two bodies (the Board and Charities Services) carrying out regulatory functions can be confusing for the public and the sector. For some, it is because one body, the former Charities Commission, used to carry out all of the functions that the Board and Charities Services now perform. On its face, the Board’s responsibility to make registration and deregistration decisions under the Act is clear. In practice, however, most decisions are delegated to Charities Services to make. Charities Services also supports the Board to make its own decisions with a recommendation and written reasoning.

The Charities Registration Board
The Board comprises three members appointed by the Minister for the Community and Voluntary Sector. The Board is not subject to the Minister’s direction and members must act independently in exercising their professional judgement.

The Board is responsible for deciding applications for registration. If it is satisfied that the entity qualifies, the Board must grant the application and direct the chief executive to register the entity as a charity. The Board can also direct that an entity be removed from the register.

The Board can regulate its own procedure. The Board must still observe the rules of natural justice, and give entities a reasonable opportunity to make submissions on registration and deregistration matters.

When making decisions to register or deregister charities, the Board applies the law (from the Act, and from court judgments).

Under section 9, the Board can delegate any of its functions to the chief executive of the Department, who in turn, delegates to Charities Services. In practice, the Board delegates the vast majority of registration and deregistration decisions to Charities Services. The Board has an important role in providing guidance to Charities Services on applying the law. For example, guidance on ‘serious wrongdoing’ and how the definition of ‘charitable purpose’ applies to specific situations. This guidance is important, as the Board remains responsible for decisions that Charities Services makes under delegation.

The small number of registration and deregistration decisions that the Board makes primarily focus on novel or complex decisions. In making these decisions, the Board receives from Charities Services a recommendation, written reasoning, and all material that the organisation has provided. On its face, the Board’s responsibility to make registration and deregistration decisions under the Act is clear. In practice, however, most decisions are delegated to Charities Services to make. Charities Services also supports the Board to make its own decisions with a recommendation and written reasoning.

The Board is accountable for its decision-making through the appeal or judicial review of its decisions.
to the courts, as well as through complaints to the Ombudsman. The appeals chapter of this document discusses this further. Board decisions are published online.

**Charities Services (Department of Internal Affairs)**

Charities Services performs two kinds of functions. Firstly, under section 10 of the Act, it provides educational support and advice to charities, maintains the charities register, and monitors and promotes compliance. These day-to-day operations are covered later in this chapter.

Secondly, Charities Services makes decisions to register or deregister charities under delegation from the Board, and following the Board’s guidance. These decisions remain the Board’s responsibility, and can be appealed, like other registration or deregistration decisions. Like the Board, Charities Services must apply the law and perform this registration and deregistration decision-making role independently of both the Minister and charities.

Information on Charities Services’ performance is published in the Department of Internal Affairs Annual Report. This includes the results of an annual independent assessment of randomly sampled regulatory decisions. In 2017/18, 97% of these decisions were assessed as meeting the required quality and timeliness.

Section 12 of the Act requires an annual meeting between Charities Services and charities sector representatives where charities can question the operation of the Act. At this meeting, Charities Services reports on the past year’s activities and future plans.

Charities Services’ decisions can be judicially reviewed. Charities and the public can also hold Charities Services to account for its actions or decisions through complaints to the Ombudsman, and can request information under the Official Information Act 1982.

**Registration and deregistration decision-making**

The Act sets out the process and procedural obligations and safeguards when considering registration applications. Table 3 shows that 1,087 applications were received in 2017/18, with 815 approved, 4 declined and 268 withdrawn.

**Table 3: 2017/18 registration decisions**

<table>
<thead>
<tr>
<th>Total applications</th>
<th>Outcome</th>
<th>Number</th>
<th>Decision-maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,087</td>
<td>Application approved</td>
<td>813</td>
<td>Charities Services (under delegation)</td>
</tr>
<tr>
<td></td>
<td>Application withdrawn</td>
<td>268</td>
<td>&quot;Decision-maker&quot; is not applicable. (This is because withdrawals are either: applications the Act treats as withdrawn or applications actively withdrawn by the applicant.)</td>
</tr>
<tr>
<td></td>
<td>Application declined</td>
<td>4</td>
<td>Board</td>
</tr>
</tbody>
</table>

Section 32 of the Act sets out when a charity can be deregistered. Typically, around half of deregistrations are made at the charity’s request, mainly because they are no longer operating. Most of the remaining deregistrations are due to the charity having failed to file annual returns for two or more years.

Over the last five years, 11 charities have been deregistered for other reasons, including because charitable purposes were not advanced, or because of serious wrongdoing. In 2017/18, the Board made one deregistration decision, with Charities Services making all remaining deregistration decisions under delegation (see Table 4).
Table 4: 2017/18 deregistration decisions

<table>
<thead>
<tr>
<th>Grounds for deregistration</th>
<th>Number of decisions to deregister on this ground</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charity requested removal from register</td>
<td>563</td>
</tr>
<tr>
<td>Decision to deregister because charity did not file annual returns for 2 or more years</td>
<td>Deregistered by Charities Services 506</td>
</tr>
<tr>
<td></td>
<td>Decision to deregister by Board 1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1070</strong></td>
</tr>
</tbody>
</table>

Maintaining the charities register

Charities Services maintains the charities register. The register is a publicly available, central resource of data on a charity’s purpose, officers, staff and volunteer numbers and hours, and annual financial performance. The register is a rich source of information for the public, funders, government agencies, charities, researchers, and the media.

Information on the register is taken from applications for registration and annual returns. In some cases, public access to information can be restricted in the public interest. The addresses of women’s refuges are withheld to protect the women accessing its services, for example.

The register is live, which means up-to-the-minute data is available to the public. The data is open, so people can access and use the data for whatever legal purposes they choose.

Compliance functions and tools, including education

Charities Services uses a range of education and compliance tools shown in Figure 3.

Education functions

Charities Services’ education work involves providing information, support and guidance to help charities meet the requirements of the Act.
Since the introduction of new reporting standards in 2015, Charities Services has focused its education activities on helping charities meet these requirements. It has produced blogs, webinars, workshops, clinics and other resources. The proportion of charities successfully reporting has increased over this period. Charities Services is working on a project to support good governance in the charities sector.

Registered charities are also provided other assistance and support to meet requirements. For example, they can call or email questions to Charities Services, and are sent regular reminders about the need to file annual returns.

Powers of investigation
Charities Services has broad powers in the Act to examine and inquire into any registered charity, where this is reasonably necessary. An investigation will generally only be initiated where:
- initial inquiries indicate possible serious or deliberate non-compliance with the Act, and/or possible serious wrongdoing by the charity or someone connected with it; and
- an assessment of the nature and level of risk to public trust and confidence relating to the issue or allegation indicates an investigation is appropriate.

Definition: Serious wrongdoing is defined in the Act as:
- an unlawful or corrupt use of a charity’s funds or resources;
- an act, omission or course of conduct that constitutes a serious risk to the public interest in the orderly and appropriate affairs of a charity;
- an act, omission or course of conduct that constitutes an offence; or
- an act, omission or course of conduct by a person 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. These include working with the charity to resolve any issues, warnings, and deregistration. Powers further up the pyramid (in Figure 3) may be used where Charities Services assesses there is a risk to public trust and confidence, and to the effective use of charitable resources. The powers at the top of the pyramid are used in the most serious cases.

**What are the issues?**

**Strengthening connections between the regulator and the charities sector**

The work of the Board and Charities Services is critical to all charities in New Zealand. Given the size of the sector, there are limits to how accessible these bodies are to charities. Charities Services has 38 staff and has shifted towards a greater online presence and electronic communications, with fewer face to face interactions.

Mechanisms connecting the regulator and the charities sector vary across countries. For example, the Scottish regulator is required to consult with representatives of the charities sector before issuing particular guidance. More formally, the Australian regulator receives advice and recommendations on its functions from a Ministerially appointed advisory board.

- 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?

**Registration decision-making could be strengthened**

The Act does not specify the type of information to be provided in support of an application for registration (for example, about the applicant’s purpose or activities) or how such information should be assessed when the application is considered.

Some commentators are concerned that without better guidance, small or new organisations may not be able to determine the evidence they need to provide. This can also create problems for the regulator and the courts when making decisions on charitable purpose, as it is not clear what kind of evidence should be considered beyond the applicant’s constituting document.

The Board is not required to apply any rules of evidence while deciding an application. The sector has raised concerns about this, particularly relating to the use of internet searches which may lead to the Board taking into account incorrect or outdated information. On the other hand, Charities Services always informs the applicant of the information it provides to the Board in advance.

When considering an application for registration, the Board does not hear oral evidence in support of the application. Some in the charities sector are concerned that there is no ‘trier of fact’. That is, there is no body before which evidence is called and tested so as to prove questions of fact. Without traditional court mechanisms for calling and testing evidence, some consider that applicants are disadvantaged. They are concerned that applicants may be further disadvantaged in any subsequent appeal, because the court will only consider information provided in the initial application (see Appeals chapter).

On the other hand, the Act requires the regulator to observe natural justice in considering applications, and prescribes the process for notifying an applicant where an application may be declined.

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

**Perceptions of independence**

Registration decisions are fundamental to the integrity of the system. To be effective, the regulator must make decisions that are ‘free from the direct control of politicians and regulated parties’. We are also interested in better understanding concerns that current regulatory arrangements may not ensure independent decision-making.

Some commentators saw this independence as compromised when some functions of the disestablished Charities Commission shifted to Charities Services, within a government department. However, it is not unusual for regulatory functions like educating, informing, investigating and monitoring to sit within government departments.

When it was disestablished, the Charities Commission’s functions of registering and deregistering charities shifted to the Board. The Act explicitly requires the Board to act independently, and Board members are not subject to direction from the Minister.

However, independence is determined by more than just structural form. It also depends on who makes decisions, the decision maker’s level of discretion, accountability for performance, and transparency of decision-making. Any perception that key decision-makers lack independence could undermine trust and confidence in the charities framework.

Changing the regulator’s structure could address concerns over the independence of decision-making. But structural changes could be disruptive and a distraction, and require significant establishment costs.

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?

Can the charities register be improved?

We are interested in suggestions for how to improve the register for charities and the public. The register details a charity’s purpose, officers, staff and volunteer numbers and hours, and annual financial performance.

Publicly accessible information enables research and informed decision-making (for instance, helping funders when assessing a charity’s funding application, or informing a person choosing a charity to volunteer with).

How could the register be improved?
The Act may not provide all the right regulatory tools to ensure compliance

Recent investigations by Charities Services into misconduct and mismanagement have highlighted potential gaps in its statutory powers. It considers that a more fit-for-purpose ‘regulatory toolbox’ would enable it to do both a better job of investigating and sanctioning serious wrongdoing, and take a more effective and proportionate approach to addressing non-compliance.

Charities Services has identified potential new regulatory tools that it considers would better support the regulator to administer the Act.

The Board’s powers when considering applications for registration

There are a number of limitations on the Board’s powers when considering applications for registration.

For example, the Board has no ability under the Act to decline to register, or subsequently remove, an organisation that provides false or misleading information.

Additional powers could help the Board to ensure that only organisations that meet requirements are registered as charities.

Another example is that currently the Act does not require a deregistered charity to show it has addressed the issues that led to deregistration when it applies for re-registration. Persistent failure to file annual returns is the main reason for deregistration, but the Act does not require a charity deregistered for this reason to show it will better meet its filing obligations in future.

The Board also has no powers under the Act to backdate a registration to a point earlier than the date a completed application was received. This would be beneficial in the occasional case where the deregistered charity has successfully reapplied but has incurred a significant tax bill in the time it was not registered. At the moment, the only option for the charity is to appeal to the High Court, which has costs for both the charity and the Board.

The Australian regulator has broader powers when considering applications for registration, including powers to:

- decline an application for a deregistered organisation if the regulator is not satisfied that the matters that led to the deregistration have been dealt with;
- deregister an organisation for providing false or misleading information in connection with its application for registration; and
- set the date of registration earlier than when a completed application is received.

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

Powers during an investigation

Charities Services can require any person to supply information or documents to assist in its inquiries, but it can be difficult for it to determine whether information provided in response to a notice is complete and accurate.

Charities regulators in Australia, and England and Wales, are able to obtain warrants from the courts to search the premises of a charity during an investigation. Charities Services does not have search powers to gather evidence of offending or serious wrongdoing involving charities.

Charities Services also has limited powers to prevent or contain the loss of charitable resources while an investigation is occurring. For example, the regulator cannot direct a charity to suspend operations, or suspend any person involved in the charity, pending the outcome of an investigation.

Charities regulators in Australia, and England and Wales, have formal powers to direct charities to take (or not take) a certain action, ask a court to make charities do or not do something, and suspend officers of a charity. The Charity Commission in England and Wales can appoint an interim manager to a charity during an inquiry.

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

Enforcement powers

Currently, the Board’s main enforcement powers
to respond to serious wrongdoing or breaches of the Act are to deregister entities and disqualify officers from being involved in other charities. Warning notices can be issued, but there are limited options for intermediate sanctions as alternatives to deregistration in less serious cases of non-compliance.

Australian legislation gives the regulator a range of enforcement powers. For example, the Australian regulator can enter into enforcement undertakings, which are voluntary arrangements with charities about what they must do to meet their obligations. These arrangements can be enforced by a court.

Charities regulators in Australia, and England and Wales, can remove an officer from a charity. In New Zealand, the Board can only disqualify an officer for serious wrongdoing if their charity has been removed from the register (section 31(4)(b)). Where the problem only relates to one individual, it could be useful to be able to remove this person (and ban them from being involved in the charity) but to allow the entity to continue to operate as a registered charity.

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

The regulator’s funding

The functions performed by Charities Services and the Board are funded from a combination of Crown funding and fees paid by charities when filing annual returns. Charities with annual expenditure over $10,000 pay a fee of $51. Applying to register as a charity does not incur a fee. The Crown contribution reflects the benefit to the public of a well-regulated charities sector.

Combined funding in 2017/18 totalled $6.92 million. This figure can be broken down into $6.05 million Crown funding and $873,000 (13%) funding from charities fees. These funds are used to support all functions of charities regulation, such as the Board’s costs of $57,000 in 2017/18.

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

Donations make up $4 billion of the $18 billion total annual income of charities. While many charities can solicit donations themselves, others contract a third party fundraiser to solicit donations. For many charities, outsourcing fundraising is the most cost effective option, similar to seeking external legal or accounting advice. It is often cheaper for a charity to use a third-party fundraiser, than to raise the same amount of money itself.

Registered charities must provide information about fundraising costs in their annual financial returns, but do not need to indicate whether fundraising was undertaken in-house or by a third party.

The fundraising sector is self-regulated through the Fundraising Institute of New Zealand and the Public Fundraising Regulatory Association. The organisations work collaboratively to educate their members about fundraising standards and ensure they comply with codes of conduct. Membership of both organisations is voluntary.

All face-to-face fundraisers in New Zealand are members of the Public Fundraising Regulatory
Association. Fundraising Institute of New Zealand members must abide by practice standards set for a range of fundraising methods, such as telemarketing or direct mail.

The Act does not regulate third party fundraisers. Section 28A of the Fair Trading Act 1986 provides for the making of regulations to require information disclosure by third party fundraisers. However, regulations made under this power would only cover the disclosure of third party costs. Comparing the costs of third party and in-house fundraising would be difficult, and implementing regulations could have unintended consequences. For example, it could incentivise charities to fundraise in-house, even if outsourcing fundraising was more efficient. For these reasons, no regulations have been made under section 28A to date.

Surveys of public trust and confidence in charities provide limited evidence of public concern about the role of third party fundraisers. Some respondents indicated concern about how much money donated to a third party fundraiser would reach the charity.

We are interested in hearing donors’ views of how charities can use third-party fundraisers without affecting public trust and confidence in the charities sector. For example, the regulator could have a role in educating and informing the public on the role of third party fundraisers, and the reasons charities use their services.

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?

17 Section 28A of the Fair Trading Act 1986 defines a “fundraiser” as a person or organisation who, in business, makes requests for donations for charitable purposes.

Appeal of regulator decisions

Introduction
In any regulatory system, appeals are vital means of holding decision-makers to account. However, as key elements of charities law sit in common law, appeals are especially important. It is therefore only when decisions are appealed to the courts that law (for example the interpretation of ‘charitable purpose’) can evolve to reflect changes in society. In making registration decisions, the charities regulator applies the law from previous court judgments.

This section seeks your views on how the appeal process is working at the moment, and how to improve it. Specifically, we welcome your feedback on the following.

• What decisions should be subject to an appeal?
• Who should be a party to an appeal?
• What procedures should apply to an appeal?
• What body should decide the appeal?

Current situation
Under section 59 of the Act, a person can appeal a Board decision to the High Court, within 20 working days of the Board’s decision. The High Court may confirm, modify, or reverse the decision being appealed. Section 59 only refers to appeals from decisions of the Board. This includes registration and deregistration decisions made by Charities Services under delegation, which means that all registration and deregistration decisions can be appealed.

Section 61, however, provides that in determining an appeal, the High Court may confirm, modify, or reverse the decision of the Board or the chief executive.

The inconsistency between sections 59 and 61 of the Act has led to dispute over whether decisions of the chief executive (delegated to Charities Services) can also be appealed under section 59. The ability to appeal Charities Services’ decisions has been a significant point of concern for some charities since the original Charities Bill in 2004. Considering the Charities Bill in 2004, the Select Committee considered that it should be possible to appeal all decisions of the regulator that adversely impact on a particular organisation.19

Appeals are not the only means of challenging decisions by Charities Services and the Board. Decisions can also be challenged by judicial review, or by a complaint to the Ombudsman.

An entity affected by a decision may apply for a High Court judicial review of the decision-making process, or the legality or reasonableness of the decision. If successful, the decision is usually referred back for the original decision-maker to reconsider.

The Ombudsman can investigate complaints about the administrative acts and decisions of government agencies.20 Since 2013, the Ombudsman has investigated and made findings on three decisions by Charities Services. These related to two complaints that Charities Services did not investigate and a response by Charities Services under the Official Information Act 1982. None of these three were upheld. Two complaints are currently with the Ombudsman.

Appeals under section 59 are heard according to High Court Rules. Under High Court Rules 20.9 and 20.17, the Board can be represented and heard at the hearing, although it is not the respondent. The Court conducts appeals as re-hearings. This means that it only considers the evidence that was submitted as part of the original application to the Board, unless the Court agrees to the appellant bringing new evidence. This is the standard procedure for an appeal by way of rehearing under High Court Rule 20.18.

Since the charities register was established in 2005, about 56,000 decisions have been made to approve, decline, or deregister organisations.21 Of these decisions, we are aware of only 24 that have been appealed to the courts. Of those 24 appeals:

20 Schedule 1, Ombudsmen Act 1975.
21 This number includes voluntary deregistrations, but not registration applications that are withdrawn before a decision is made.
• seven were dismissed;
• six succeeded (with the courts substituting their own decision in four cases, and the courts referring the matter back to the Board to consider in two cases);
• seven were resolved with the consent of the parties without a full hearing; and
• four are ongoing.

Only one of these appeals has gone all the way to the Supreme Court.22

Nearly all the appeals related to whether the entity was furthering exclusively charitable purposes. These added to the law on how ‘charitable purpose’ is interpreted. A small number of appeals related to other issues, like the backdating of registration.

What are the issues?
Which decisions should be subject to appeal?
The sector’s ongoing concern is that any decision made under the Act – not just registration and deregistration decisions – should be subject to appeal.

Under the Act, Charities Services makes a range of decisions, when exercising functions of the chief executive. A few examples are decisions to:
• treat one or more entities as a single entity (under section 44);
• omit, remove or withhold information from the charities register (under section 25); and
• undertake compliance activities (for example to open an inquiry under section 50).

An ability to appeal a wider range of decisions would provide greater accountability over all regulatory decisions, including relatively minor decisions. On the other hand, allowing appeal of all decisions by Charities Services would have cost implications and would impact on its ability to carry out its functions in a timely and efficient manner. In general, an ability to appeal should be available if a person’s rights or interests are affected by a decision.

Other challenge routes, for example internal reviews, could be considered for decisions that may not be appropriate for appeals. Internal reviews are used in other regulatory systems. For example, disputed welfare benefits are initially reconsidered through a Work and Income internal review. Internal reviews can correct mistakes, without the cost and formality of an appeal. The downside of internal reviews is that they may not be seen as independent as other challenge routes.

Which decisions made by Charities Services should be subject to appeal? Why?
Should the Act provide for internal review of Charities Services decisions?

Who should be a party to appeal of registration decisions?
When hearing an appeal under section 59, High Court Rule 20.9 requires that the decision-maker, in this case the Board, is not named as a respondent. Since there is no opposing party in a charities appeal, the Board may appear to assist the court. The Board cannot advocate for its decision or take an adversarial role. The Board does not have a right of appeal against any decision of the High Court. This limits the appeal process and the development of charitable case law. By contrast, in England and Wales, the Charities Commission is named as the respondent in registration appeals.

The Act also does not require the Attorney-General, as protector of charities, to be named as a party to an appeal or to be served with appeal papers. The court can require the appeal papers to be served on the Attorney-General, and the Attorney-General may apply to join an appeal as a party. However, because there is no requirement to serve appeal papers on the Attorney-General, he or she is not formally alerted to appeals and may not have the opportunity to consider whether to apply to join.

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?

**Should the court hear new evidence, and how should the appeal be heard?**

Appeals under section 59 are heard by the High Court as re-hearings, on the basis of the evidence considered by the original decision-maker. Re-hearings are often used to consider appeals over specific legal or factual errors.

Some stakeholders have raised concerns that opportunities to bring new evidence before the court are limited. This is because the court does not usually hear new evidence during an appeal. If the court does hear new evidence in a re-hearing, it is by affidavit (i.e. written evidence, signed in front of an authorised person).

Some stakeholders are also concerned that there is no testing of evidence orally in re-hearings. This is on top of there having been no oral hearing before the decision-maker that made the original decision.

Some have proposed that appeals be heard de novo. This enables an entirely new hearing, with an oral hearing of evidence by the court. On the other hand, de novo hearings are generally more expensive and slower than re-hearings. Hearing the matter afresh on appeal may increase the risk of the original decision-making process becoming a ‘test run’.

**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)?**

**Is the time limit for lodging appeals restrictive?**

Setting time limits for lodging appeals promotes certainty. Time limits also need to be reasonable, so that the appeal right can be exercised.

Board decisions must be appealed within 20 days from when the decision was made, unless the Court grants an extension. This time-frame is similar to other regimes. For example, appeals to the High Court under the Companies Act must be lodged within 15 working days of the Registrar of Companies’ decision. Under the Incorporated Societies Act, a person has 21 days to appeal to the High Court from the Registrar’s decision.

However, some in the sector have raised concerns that the 20 day time limit is particularly problematic for the charities, which are often run by boards of volunteers who need time to discuss the outcome of the decision, decide whether to initiate litigation, and instruct a lawyer. In Australia, decisions must be appealed within 60 days.

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

**Is the High Court the appropriate body to hear all appeals?**

The High Court hears appeals under the Act, and is assisted by following decisions of higher courts (i.e. the Court of Appeal and Supreme Court). Commentators have argued that the cost of High Court proceedings deters entities from appealing decisions. This may explain the relatively small number of appeals heard by the High Court since 2005, relative to the number of registration decisions in that time.

Related to this, some commentators have raised concerns about:

- the risk of costs being awarded against an entity;
- entities being ineligible for civil legal aid (because they are not ‘natural persons’); and
- the risk of entities finding themselves ‘out-resourced’ by the representatives of the regulator assisting the court.

Disputes in other regulatory systems are often decided by a lower level court, tribunal, or authority. A right of appeal to the High Court from a tribunal or appeal authority remains. For example, tax disputes are heard by the Taxation Review Authority. The Taxation Review Authority is less formal, and may end up less costly than the High Court. Taxpayers can appeal the Taxation Review Authority’s decision to the High Court.

A person can seek an independent review of an Accident Compensation Corporation decision. Following the review decision, a person can appeal
to the District Court, and subsequently to the High Court (with leave).

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

**What other approaches could enable the law on ‘charitable purpose’ to develop more quickly?**

Even though most appeals turn on ‘charitable purpose’, the number of decisions on appeal each year is small, compared to the number of decisions the Board makes. The small number of court decisions risks the law on ‘charitable purpose’ becoming static. While overseas cases and cases in related contexts assist, having few court decisions under the Act is an issue. This is because the courts' interpretation of 'charitable purpose' in different cases adds to the law and helps keep the definition relevant.

Few appeals also means limited testing of the Board’s decisions by the courts.

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

He taonga rongonui te aroha ki te tangata
Goodwill towards others is a precious treasure

Introduction

This section seeks your views on issues which primarily affect Māori organisations that register as charities.

Since the Act was passed in 2005, the Māori-Crown partnership has evolved and matured. There have been over fifty Treaty settlements in that time. Modernising the Act is an opportunity to assess how well the Act supports the aspirations of Māori communities, and enables the Crown to fulfil its obligations as a Treaty partner.

Current situation

Ngā mātāpono: guiding Māori concepts of charity

The work of Māori charities not only achieves charitable purposes but is central to maintaining culture, traditions, and sense of identity and kotahitanga (unity and collectivism). While Māori charities are diverse, many will share similar kaupapa (principles and ideas) and tikanga (procedures and customs), and will face similar challenges.

The underlying values that often motivate and guide Māori participation in the charities sector are:
- whanaungatanga – relationship, kinship and family connections which provide a sense of belonging;
- manaakitanga – the process of showing respect, generosity and care for others; and
- kaitiakitanga – the obligation of whānau, hapū and iwi to protect the spiritual wellbeing of the taiao (natural world) and their authority within their area.

In both traditional and urban contexts, each person has a duty of care to whānau, hapū and iwi, and to contribute to maintaining the strength and wellness of that community. Mahi aroha (unpaid work to fulfil cultural obligations) is a term akin to volunteering, describing activity performed out of sympathy and caring for others, rather than for financial or personal reward.

Case study: Manukorihi Pā Reserve Trust - example of an iwi-based charity

Manukorihi Pā Reserve is a historical Pā in Waitara, Taranaki rich in history and still today a focal point for the wider community. The Pā Reserve features a number of significant buildings including Te Ikaia a Maui, a carved wharenui, crafted by many locals and people from all over New Zealand.

Manukorihi Pā Reserve Trust consists of twelve trustees representing the 6 hapū of Te Atiawa and 6 beneficial landowners to the reserve. One of the Trust’s charitable purposes is to educate visiting groups, including early childhood centres, kohanga reo, kura, schools, and tertiary institutions about the unique history of the reserve.

The Trust promotes whanaungatanga by actively linking whānau of Te Atiawa Whānui through events such as the annual celebration of the legacy of Sir Maui Pōmare. This celebration attracts hundreds of people each year from around Taranaki and the country. The Trust also maintains Ōwae Marae as a cultural gathering and meeting place for iwi, hapū, whānau, and the wider community. The Trust is guided by values and traditions handed down by tūpuna, thus upholding the principles of Mana Tangata, Mana Whenua, Manaaki Tangata and other Tikanga Māori appropriate to the Reserve.

Types of Māori charity

In this document, the term ‘Māori charity’ means a charity that has a Māori kaupapa or is run by Māori, primarily for the benefit of Māori.

Māori charities include:
- tangata whenua governance organisations which manage the affairs of hapū, iwi and marae; and
- organisations focused on specific charitable purposes relating to Māori, such as Te Rōpū Wāhine Māori Toko i te Ora (Māori
Like other charities, Māori charities use a range of legal structures including unincorporated trusts, charitable trusts, incorporated societies, and companies. However, some legal structures are unique to Māori charities, including:

- **marae**: Maintenance and administration of marae on Māori reservations is a charitable purpose under the Act (section 5(2)(b)). Most marae also have other charitable purposes, such as community facilities, education or social services.

- **iwi settlement organisations**: These include post settlement governance entities (PSGEs) and mandated iwi organisations (MIOs).
  - PSGEs receive cash and other assets from the Crown, on behalf of claimant groups, as redress for historical breaches of the Treaty of Waitangi. Generally the Crown has not settled assets on charitable trusts, but many PSGEs have later established both charitable and commercial arms.
  - MIOs are iwi organisations established under the Māori Fisheries Act 2004 to receive allocated fisheries assets. MIOs must establish asset holding companies. Some MIOs are registered as charities.

- **Māori Trust Boards**: Established under the Māori Trust Board Act 1955, these boards administer assets for their beneficiaries, and some are registered charities.

- **Te Ture Whenua Māori Act trusts**: The Māori Land Court can constitute a range of trusts to manage Māori land, some of which are registered charities.

**The Māori charities sector**

We estimate there are about 1000 Māori charities, with most involved in education, training and research, arts, culture, and heritage, health, social services and religion. Around 200 to 300 marae are registered as charities. Māori charities are less than 5% of the total number of charities.

Over 60% of Māori charities have annual expenditure under $125,000. However, some iwi settlement organisations with large asset holdings are registered charities. As at April 2018, Māori charities held around $6 billion in total assets, with $1.5 billion in total annual income, and total expenditure of $1.2 billion.

**What are the issues?**

Māori charities share many of the issues and opportunities covered elsewhere in this document. Below are some issues particularly relevant to Māori charities. We would like to hear from you whether there are other issues we have not covered.

- **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?**

**Charitable status may limit the use of Treaty settlement assets by iwi entities**

Treaty settlements have enabled iwi to support their people in ways such as providing financial support, saving schemes, housing, health and social services, and improving marae.

Where settlement assets are held by an iwi settlement organisation or subsidiary entity that

Source: Manukorihi Pā Reserve Trust
is a registered charity, those assets can only be used for charitable purposes. This can limit how iwi settlement organisations use their funds to benefit their members. Some have argued that the restrictions on charities can act as a ‘straitjacket’ which prevents initiatives to promote iwi self-determination, such as universal cash distributions, or housing, employment, and economic development programmes. If an iwi settlement organisation wishes to deregister a charity, so it can apply funds to purposes that benefit the iwi or hapū but are not charitable under the law, it may risk incurring a deregistration tax on its assets.

**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?**

**Challenges with reporting requirements**

Similar to many small charities, marae can struggle to meet reporting requirements. While most marae are complying with the new reporting standards, some are finding it difficult.

We understand there may be confusion about how the requirement to record revenue from members should be interpreted in the context of marae activities and tikanga Māori.

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

---

23 However, we note Section HR 12 of the Income Tax Act 2007 includes carve out provisions for assets received from the Crown to settle a Treaty of Waitangi claim or in accordance with the Māori Fisheries Act 2004.
Business

Introduction
This section seeks your views on how to manage risks around charities that operate businesses to generate income for charitable purposes.

All charities need sustainable sources of finance to carry out their work. Since the passing of the Act in 2005, information from Statistics New Zealand indicates that charities overall are relying increasingly on income from trading goods and services.24

The Act does not contain any explicit provision for charities with business activities but there are related provisions. Section 13 states that a charity cannot be carried on for the private profit of any individual. According to case law, charities can operate a business so long as any profit is ultimately applied to exclusively charitable purposes.

In recent years, it has become common to refer to charities with significant trading as social enterprises. The term ‘social enterprise’ is not defined in legislation, but it generally refers to organisations that get most of their income from trading, and apply the majority of profits to pursuing social or environmental impacts. Many social enterprises are registered charities. Because of section 13, a social enterprise that provides private profit to an individual cannot register as a charity.

The regulatory framework should enable charities to raise funds to support their work, while providing certainty that charities are only undertaking business activities to further charitable purposes.

Current situation
Charities with unrelated businesses
This chapter is particularly concerned with charities with ‘unrelated businesses’ where the service or product does not directly contribute to a charitable purpose. These take many forms, such as op shops, food and drink retailers, hotels, and trucking companies. This differs from charities with trading operations related to their charitable purpose, such as a medical clinic providing health services to promote public health.

We do not know exactly how many charities carry out unrelated business activities. However, approximately 900 companies are registered charities. There are 6,700 charities that report costs of trading. This number includes both charities with unrelated businesses and charities with trading operations related to their charitable purpose. That is about a quarter of the total number of registered charities. They hold $22 billion in total assets and receive $2.9 billion in income from trading and $7 billion in total gross income in 2017.25

Structure of charities with unrelated businesses
Some charities are standalone businesses that solely raise funds for charitable purposes. Some charities choose not to run standalone businesses. Instead, they establish subsidiaries to operate their businesses, as illustrated in Figure 4. The charity may fund the set-up of the business subsidiary, and the business returns profits to the parent charity. A business subsidiary of a charity may or may not be registered as a charity itself. Currently, a business subsidiary does not need to be separately registered to access tax benefits although there are proposals before Parliament to change this.26

Figure 4: Relationship between a charity and its business subsidiary

25 Information sourced from annual returns provided to Charities Services.
The law on charities and unrelated businesses

New Zealand courts have long held that a charity can undertake business activities unrelated to its charitable purposes. A charity may carry on any business, buy and sell, employ staff, accumulate funds, and engage in any other commercial activities. The key test is whether income from those business activities is ultimately applied to charitable purposes.27

Currently, Charities Services requires that for an organisation with an unrelated business to register as a charity, it must show that:
- the business is capable of making a profit to go to charitable purposes; and
- the organisation does not provide any resources to its business operations at less than market rates.

To assess registration applications by organisations

Example A: An unrelated business successfully generates income for charitable purposes

‘Positive Energy’ is a limited company which supplies power to New Zealand businesses and communities. It is owned by a community trust that distributes grants for charitable purposes. Both Positive Energy and the community trust are registered as charities.

Positive Energy owns total assets worth $200 million, mostly its power stations and computer systems. It generates a net surplus each year of around $7 million. Of that, about $5 million per year is distributed for charitable purposes through its owner, the community trust.

27 Auckland Medical Aid Trust v CIR [1979] 1 NZLR 382 at 387.
See also CIR v Carey’s (Petone and Miramar) Ltd [1963] NZLR 450; Calder Construction Co Ltd v CIR [1963] NZLR 921; CIR v NTN Bearing-Saeco (NZ) Ltd (1986) 8 NZTC 5,039.
Duties of officers of charities undertaking business activities

The officers of a charity that undertakes business activities will often have other legal duties depending on the charity’s legal structure. For example:

- trustees of a trust have duties to avoid conflicts of interest, invest prudently and not profit from being a trustee;
- officers of an incorporated society must ensure the society’s activities are not carried on recklessly or in a way that creates substantial risk of serious loss to the society’s creditors; and
- directors of a company must act in good faith and in what they believe to be the best interests of the company.

Charities and business in other countries

In respect of business activities, the New Zealand charities regime is comparatively liberal. Other countries, including Canada, the United Kingdom, the Republic of Ireland, and the United States, generally do not allow unrelated businesses to register as charities.

In Canada, for example, a charity can only carry on a business if it is a ‘related business’. That is, a business that is either run substantially by volunteers, or is linked to a charity’s purpose and subordinate to that purpose. A charity can establish a subsidiary company to generate finance for its charitable purposes, but the subsidiary cannot register as a charity.

In England and Wales, charities can only engage in an unrelated business if the business involves no significant risk to the charity’s assets. If there is significant risk, the charity must establish a business subsidiary that is not a registered charity, and must do so in a way that protects the charity’s assets.

What are the issues?

Are the registration requirements for unrelated businesses appropriate?

Charities Services’ approach to unrelated businesses, derived from the Act and case law, is questioned by some stakeholders. It may be difficult for a charity with an unrelated business to meet the requirements for registration under Charities Services’ approach, especially for a small start-up aiming to raise funds for charitable purposes. For example, it may be difficult to demonstrate the business’s ability to make a profit in the early stages (see example B).

Example B: A start-up business struggling to generate profits for its parent charity

A trust and a subsidiary company apply to register as a charity. The trust’s main purpose is to provide scholarships for tertiary students studying computer science.

The company was started five years ago to raise funds by selling software products. The trust provided $300,000 in loans to the company, and raised $100,000 funding from a public campaign. That money has supported the salaries of a team developing software products as well as for marketing, computer equipment, and office rental.

The company started selling its software four years ago but has yet to make a profit. It hopes to make a profit in the next three years - though sales have not increased since the first year. It says it needs more funds for software development and marketing to increase sales. The trust plans to make further loans to the company. It has provided $10,000 in scholarships since it was founded.

The regulator must decide whether the trust and company are furthering charitable purposes through support for the software business. It will look for evidence that shows the company will be able to generate profits to fund the trust’s charitable purposes.

What should be the registration requirements for unrelated businesses?

Reporting requirements for charitable businesses

Some charities undertaking business activities have developed complex structures with a large number of subsidiaries. These structures may include business subsidiaries which are for-profit or involved
in partnerships with for-profit entities.

The Act provides some tools for the regulator and the public to monitor the activities of those subsidiaries even if they are not registered. For example, it enables the regulator to require information from non-charities when investigating a breach of the Act.

The reporting standards require charities to provide information on all organisations they control in consolidated financial statements, even where the business subsidiary is not registered. Consolidated financial statements present information about a charity and the organisations it controls as if it were a single entity.

In some cases, consolidation can reduce transparency. Consolidated financial statements may not contain all the information needed to fully assess the financial well-being of business subsidiaries of a charitable group. Consolidation may also obscure transactions between the charitable arm and business arm of a charitable group. It may not be clear if transactions between the charitable and the business arms are furthering a charitable purpose.

Conversely, where a charity-owned business is not registered, consolidation does provide some valuable information on the business subsidiary that may not otherwise be reported.

Some charities may wish to withhold financial information on their business subsidiaries from the charities register for commercial sensitivity reasons. In particular, where the business subsidiary is not a registered charity and does not receive any tax benefits.

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?

Charitable funds may be put at risk

Providing support to a business may be a good use of charitable funds, if the business has the potential to provide sustainable income for the charity. However, if the business is not successful, it may deflect the charity’s funds away from its charitable purpose. If the business closes, the charity may not get back the funds it used to support the business, particularly if the business has borrowed money or has other creditors (see example C).

Members of the public who donate to charities expect donations to go to charitable purposes. If
too many charities take on too much business risk, this could ultimately start to erode public trust and confidence in the charities sector.

**Example C: Charitable funds lost through business activities**

The Southern Cross Charitable Trust was deregistered as a charity for gross mismanagement and advancing a non-charitable purpose to provide private benefit to related parties.

The Trust was formed in 1993 with purposes to provide education and support youth-at-risk and was registered under the Act in 2008. Previously, the Trust had set up and provided substantial funds for the Kiwi Can programme.

The Trust raised funds by charging interest on loans to building projects. For each project, the Trust established a trust and a company, each run by one of the trustees. The Trust established a total of 45 trusts and companies in this manner.

Huge amounts of money went through the Trust, with very little applied to charitable purposes. Between 2005 and 2010, the Trust received an estimated $30 million from the building projects. Around $25 million of this was loaned back to related entities.

During the time it was registered, the Trust provided $11,392 in donations to registered charities.

Approximately $34.5 million remained outstanding in loans and unpaid interest at the time of deregistration.

In England and Wales, charities are not permitted to run businesses where there is significant risk to charitable assets. However, introducing a significant risk test in New Zealand could make it more difficult for some charities to raise funds.

As discussed above, most charity officers will already be bound by other duties under the law depending on the charity’s legal structure. However, governance standards, discussed in the chapter on the Obligations of charities, are another way to mitigate the potential risk to charitable funds. Standards could include guidance for charities when making decisions on business activities.

This guidance could also respond to wider concerns of charities and investment. In particular, concerns about charities that wish to invest in social enterprises that provide lower rates of return than other investment options.

**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?**

**Charitable funds may provide private profit to individuals**

‘Related party transactions’ are transfers of money, goods or services between a charity and people closely associated with (or able to influence) the charity. Charities commonly rely on services from related parties such as officeholders and members of the governing group, and often it is reasonable for payments to be made in return. Charities are required to include any related party transactions in their financial statements.

However, related party transactions can create conflicts of interest. Officers might not make decisions in the best interest of the charity, for example. They may receive higher than market rate salaries or interest free loans. In these situations, income from business risks being used for private gain.

The Act does not indicate how to manage conflicts of interest, but Charities Services may require a charity to take reasonable steps to address conflicts, such as having a robust conflict of interest policy and rules expressly preventing officers from acting when conflicted.

Governance standards could promote duties which limit risks around related party transactions.

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

Introduction
This chapter seeks views on the extent to which charities can engage in advocacy. By ‘advocacy’, we mean working to change, or stop changes, to law and government policy. It also includes promoting points of view on issues in society. 

Advocating for causes can be a legitimate and important way for charities to achieve their charitable purposes. Charities play a crucial part in the development of policies and laws in a democratic and participative society.

From time to time advocacy by charities attracts public concern. There is therefore some risk that too much of the ‘wrong kind’ of advocacy could erode public trust and confidence in charities. Conversely, some charities are concerned that they can’t advocate at all, or they limit their advocacy, because they may lose their charitable status.

The Act offers little guidance on when and how much charities can advocate for causes. Instead, the key precedents are in common law. Some decisions relating to advocacy have been tested in court, but as few decisions are appealed, the law has been relatively slow to develop and it is complex.

Greater clarity on the issue would benefit charities, the regulator, and the public.

Current situation
In New Zealand, charities may not engage in partisan political activity, such as promoting or opposing a political party or a candidate for political office. The same is true in nearly every comparable country.

In terms of advocacy for a change in law or policy, the Act states that an advocacy purpose is permitted if it is ancillary to that charity’s main purpose (section 5(3)). This reflected the common law on advocacy purposes at the time the Act was passed.

However, the Supreme Court’s 2014 Re Greenpeace decision held that an advocacy purpose is charitable if it advances a public benefit in a way similar to purposes recognised as charitable by the courts. For example, the promotion of human rights and the protection of the environment.

So in Re Greenpeace and subsequent decisions, the courts have ruled that both the organisation’s end goal and the particular policies and views it promotes must provide a public benefit.

When deciding if an organisation is charitable, the decision-maker must consider not only the organisation’s end goal, but also the particular policies and views it promotes and how it promotes them.

How the Charities Registration Board has applied the Re Greenpeace decision
The Board has applied the Supreme Court’s test on advocacy in nine published decisions since Re Greenpeace. The Board has decided that some charities with advocacy purposes meet the Supreme Court test but has decided that other advocacy organisations do not.

In four of these decisions, the Board decided that organisations with advocacy as a main purpose qualified for registration as a charity. Two of these decisions are described in the decision summaries below (Save Animals from Exploitation and Clevedon Village Trust). In these decisions, the Board held that both the charities’ end goals and the points of view they advocate for provide a public benefit similar to charitable purposes in the common law.

In the other five decisions, the Board deregistered (or declined registration to) organisations which had advocacy as a main purpose, including Family First (summary of the High Court decision below). In these decisions, the Board accepted that some of the organisations have broad end goals that are charitable, for example the protection of the environment. However, when the Board looked at

28 The focus here is on advocacy for causes and political purposes, rather than personal advocacy for people unable to speak for themselves (which is a commonly recognised as acceptable for charities).

the particular points of view that the organisations advocated for to support their end goal, the Board decided that there was not clear evidence of public benefit (see for example the decision summary on Kiwis Against Seabed Mining).

Board decision summary: Clevedon Village Trust

Clevedon Village Trust was set up to develop a master plan for Clevedon District in Auckland and to encourage local authorities and property developers to adopt the plan. The Trust applied for registration as a charity in 2016. The Board noted the Trust’s purposes included advocacy for the specific proposals in the plan.

The courts have long recognised promotion of public amenities and heritage values as charitable. The Trust was able to demonstrate that the plan was being produced by experts in architecture, landscape and urban design, with widespread community engagement, and was focused on sustainable development. The Trust also showed evidence of the heritage values of Clevedon Village and how the plan would promote this heritage.

The Board considered that this evidence demonstrated that there was a public benefit in the Trust’s purposes to advocate for the adoption of the master plan for Clevedon. The Board approved the Trust’s application for registration.

Board decision summary: Save Animals From Exploitation

In 2015, Charities Services received a petition from members of the public to remove Save Animals From Exploitation (SAFE) from the register because its purposes were claimed to not be charitable. In response, the Board reviewed SAFE’s registration.

The review found that SAFE’s overall end goal was charitable: the promotion of animal welfare. The Board considered that most of SAFE’s advocacy provides a public benefit.

SAFE undertakes public campaigns to promote public awareness of how humans cause animal suffering and to encourage people to adopt lifestyle choices such as vegetarianism and veganism. SAFE’s campaigns also draw the Government’s attention to breaches of animal welfare legislation.

The Board considered that these campaigns advanced a charitable purpose because they provide a public benefit similar to previous charity law cases. The courts have long recognised that purposes to promote vegetarianism and the enforcement of animal welfare laws can be charitable.

The Board did not form a view on SAFE’s other campaigns advocating for changes to animal welfare laws and regulation. For example, SAFE’s campaign for a ban on rodeos. However, the Board considered this advocacy was only ancillary to SAFE’s charitable purposes.

The Board directed that SAFE remain on the charities register.


Kiwis Against Seabed Mining (the Society) applied for registration as a charity in 2014. Its purpose is to inform and educate communities on the impacts of seabed mining.

The Board considered that the Society’s end goal – the protection of the environment – is charitable. It also accepted that some of the Society’s advocacy advances a charitable purpose, in particular where it provides expertise and objective evidence to assist resource management decisions.

However, the Board did not consider the Society advanced a charitable purpose in all the points of view it advocated. In particular, the Society advocates for a moratorium on all seabed mining until the environmental impacts can be identified and prevented. The Board considered it was not in a position to determine a public benefit in this point of view taking into account all the consequences of a moratorium on seabed mining and the competing views and arguments on the issue.

The Board declined the Society’s application for registration.

The courts’ approach to advocacy following the Supreme Court decision

The courts have considered three registration or deregistration decisions of the Charities Registration Board under appeal since Re Greenpeace. Two decisions related to Family First. We summarise the most recent decision in 2018 below.

In 2016, the High Court reversed a Board decision to decline registration for two foundations with purposes to fund cryonics research. The High Court held that the foundations had charitable education purposes and the Board was wrong to decide that cryonics research was not a useful subject of study.

The High Court held, in line with Re Greenpeace, that the decision-maker should begin by asking if the stated purposes in the rules document are charitable or not, and should then consider whether the organisation’s activities (for instance, advocacy activities) support its charitable purposes.


Court decision: Family First

On 15 April 2013, the Board deregistered Family First. Family First appealed the decision but it and the Board agreed to defer the appeal until after the Supreme Court delivered its judgment in Re Greenpeace.

In 2015, the High Court directed the Board to reconsider its deregistration of Family First. The Board again decided to deregister Family First in 2017. Family First appealed the Board’s decision but in August 2018 the High Court dismissed the appeal.

Family First’s primary purpose was determined to be promotion of the ‘traditional family unit’, consisting of the permanent union of a man and woman and their children. To achieve this, Family First advocates for removing disincentives to marriage, the abolition of no fault divorce, and limiting marriage to male-female unions. Its advocacy includes support for ‘light smacking’, and views on abortion, euthanasia and censorship.

The Court held that promoting the traditional family unit (as defined by Family First) was not beneficial to the community in a way recognised by law. In particular, it was inconsistent with human rights law which prohibits discrimination on the basis of marital status. The changes to the law promoted by Family First would also cause costs to families and society. For example, the legal changes to divorce advocated by Family First would make divorce more difficult and costly.

Family First is appealing the High Court decision to the Court of the Appeal.

What are the issues?

The law is difficult for charities and the public to understand

Even following the Supreme Court decision in Re Greenpeace, the law on charities and advocacy is complex and confusing for many charities and members of the public.

In particular, the Supreme Court’s decision provides little guidance on how to assess the public benefit of advocacy by an organisation. The Supreme Court itself noted it will be difficult for an organisation to show public benefit in the promotion of points of view as readily as those who can show ‘tangible utility in the good they do’. Few decisions on charities and advocacy have come before the courts since Re Greenpeace.

Given this uncertainty and the risk of losing charitable status, some commentators are concerned that charities limit their advocacy. This may have the consequence of reducing charities effectiveness in furthering their charitable purposes.

Charities Services publishes guidance on its approach to charities and advocacy, taking into account feedback from charities sector representatives. More engagement with the charities sector on advocacy may assist in increasing understanding of when charities can advocate for their causes and points of view.

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

The law is difficult for the regulator to apply

The current law also creates difficulty for the Board in assessing the public benefit of an organisation’s advocacy. The approach in Re Greenpeace requires the Board to assess the public benefit of both the ends and the particular points of view promoted by organisations. However, there is little detail of how the regulator should assess the ‘public benefit’ in charities that advocate for causes.

In its 2015 Family First decision, the High Court said that the Board needs to examine whether a charity’s advocacy is ‘objectively directed’ at promoting a charitable purpose. This is not always clear, particularly where a group is advocating on complex or contested issues. Some advocacy may benefit some parts of the public and not others, for example.

Not only is the law difficult for the Board to apply, but some charities and commentators have argued that the application of the law is too narrow and inhibits the independent voice and expertise of the charities sector (see questions below).

Some measures to strengthen the regulator’s decision-making, described in the Role of the regulator chapter, could help the regulator when deciding public benefit in advocacy cases. In particular, rules of evidence for registration decisions could improve how organisations with advocacy purposes are assessed.

Making it easier for charities to appeal decisions may help charity law on advocacy to develop. More court decisions on advocacy could clarify how an organisation shows that its advocacy provides a public benefit and test the regulator’s approach (see the Appeals chapter).

As discussed in the regulator chapter, the Australian regulator receives advice and recommendations from a Ministerially-appointed advisory board. Advocacy is an example of a situation where an advisory board could provide independent expert advice to assist the regulator in its decision-making.

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 here?

The law on charities and advocacy may be too restrictive

In Australia, the ‘charitable purpose’ definition includes promoting or opposing a change to any matter established by law, policy or practice if it furthers or aids a charitable purpose. On the other hand, there are ‘disqualifying purposes’ under the law which a registered charity cannot have. For example, promoting or opposing a political party or a candidate for political office.

Adopting this approach in New Zealand legislation could broaden the range of advocacy that is acceptable for charities, and could be a simpler test to understand. However, the Australian approach has not solved all problems for charities and advocacy. There is still ambiguity in the Australian Act about what is a ‘disqualifying purpose’. Guidance is still needed to support charities engaging in advocacy so that they can comply with the law.

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?

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

35 Charities Act 2013 (Cth) s 12(1).
36 Charities Act 2013 (Cth) s 11.
Appendix: Questions to submit on

Vision and policy principles - page 16

? 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

? 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

? 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

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
Modernising the Charities Act 2005: Discussion document

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

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 timeframe 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

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

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**

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?

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?

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