Review of the Charities Act 2005: Release of discussion document

Proposal

1. I seek Cabinet’s approval to release the discussion document Review of the Charities Act 2005 for public consultation. Community meetings will be held around the country during the consultation period to encourage discussion and submissions on the Charities Act 2005 review (the review).

Executive summary

2. The Charities Act 2005 (the Act) provides a registration, reporting and monitoring system for more than 27,000 charities. An effective Act is essential to support the significant roles charities play in their communities and in the economy.

3. In May 2018, Cabinet noted that while the fundamentals of the Act are sound, it is now over 10 years old and a review is timely. Cabinet agreed the scope of the review would cover substantive issues with the Act, but not first principles. Further, the review would seek to determine whether the Act is effective and fit for purpose, with sufficient flexibility to suit the diverse nature of the charitable sector [SWC-18-MIN-0058].

4. Based on discussions with key stakeholders, officials have developed a discussion document with seven sections covering: Purpose of the Act; Obligations of charities; Role of the regulator; Appeal of regulator decisions; Te Ao Māori; Business; and Advocacy.

5. The discussion document provides focused questions to test ideas on the broad range of issues within scope, rather than including options for change at this stage. This approach aims to elicit submissions that will support subsequent policy development.

6. I propose to release the discussion document in late February 2019, for consultation until late April 2019. To ensure we hear from diverse charities, including those outside main centres, engagement will involve broad outreach, with public meetings in around 20 locations. This will include hui on aspects that specifically impact on Māori charities and their communities.

7. Other initiatives, in particular the Tax Working Group and the reform of the Incorporated Societies Act 1908, have connections with this review. My officials are working with other agencies to ensure this work aligns.


Background to the Act

9. The Act provides a registration, reporting and monitoring system for charities. The Act’s purposes include promoting public trust and confidence in the charities sector, and encouraging and promoting the effective use of charitable resources.
10. The Act enables organisations that carry out charitable purposes, and have a clear public benefit, to receive tax relief under the Income Tax Act 2007. Registration as a charity can also enhance an organisation’s access to charitable grants and donations. Alongside registration benefits, charities have obligations, such as to disclose consistent and comparable information in a timely manner. Registration under the Act is voluntary, but organisations must register as a charity to access the benefits.

11. An effective Act is essential to supporting the significant roles charities play in social outcomes, resilient communities, and the economy. More than 27,000 registered charities are active across diverse areas including the arts, community development, education, emergency services, environment, health, housing, marae, religion, social services and sport.

12. New Zealand charities’ total annual income is more than $18 billion. Charities employ more than 180,000 part-time and full-time staff, and are supported by 230,000 volunteers.

**Cabinet has agreed to review the Charities Act to ensure it is fit for the future**

13. In May 2018, Cabinet agreed to a review of the Act to ensure the legislative regime for charities is fit for purpose and suits the differing needs of the diverse charitable sector [SWC-18-MIN-0058]. Cabinet agreed that a review of the Act is timely, given it is over ten years old. Significant change to the sector’s operating environment has occurred since the Act was introduced, including the disestablishment of the Charities Commission and the introduction of financial reporting standards.

14. Cabinet agreed that the review would cover substantive issues within the Act, but not first principles, as the fundamentals of the Act are sound. It agreed to include within scope:

- consideration of whether any additional purposes of the Act are necessary;
- matters relating to the regulatory framework;
- matters relating to registration and deregistration of charities;
- matters relating to the obligations of registered charities; and
- alignment with other legislation.

15. Cabinet agreed to exclude from scope:

- the definition of ‘charitable purpose’;
- tax exemptions that result from registration under the Act;
- regulation of the broader not-for-profit sector; and
- contracting arrangements for government services.

**Officials have engaged with key stakeholders to develop the discussion document**

16. Officials have been working with key stakeholders to refine and test issues contained within the discussion document. This has included discussions with:

- the charities regulator, made up of the three member independent Charities Registration Board and Charities Services (a business unit within the Department of Internal Affairs);
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• the review’s Core Reference Group (a six member advisory group comprised of charity sector representatives); and
• a Sector User Group (a representative group of stakeholders established by Charities Services to discuss issues and priorities within the charitable sector).

17. The discussion of issues in the document reflects these regulator and sector perspectives across a range of concerns.

The discussion document covers all issues within the review terms of reference

18. The discussion document is attached as Appendix A. Its purpose is to test ideas and gather further information on the broad range of issues within scope. Instead of including options for change, focused questions are asked about each issue to elicit responses that will inform policy development.

19. The discussion document proposes a vision “that 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”.

20. The discussion document is organised into the following sections.
• Purpose of the Act – seeks feedback on whether any additional purposes of the Act should be included, for example “to support and sustain a robust, vibrant, independent and innovative charities sector”.
• Obligations of charities – seeks feedback on whether the Act strikes the right balance between requiring enough information from charities to ensure transparency, and ensuring requirements are manageable and not unduly onerous. Feedback is also sought about the definition and qualification requirements for officers, accumulation of funds, governance standards, and alignment with other legislation.
• Role of the regulator – seeks feedback on how well the current regulatory arrangements, through the Charities Registration Board and the Department’s Charities Services, are working. Views are sought on the independence of decision making, accountability and transparency, and the regulator’s approach to compliance and enforcement.
• Appeal of regulatory decisions – seeks feedback on the current appeals process, including the cost of appeal to the High Court. Views are also sought on procedural issues relating to appeals and alternate approaches to hearing appeals.
• Te Ao Māori – seeks feedback on how the Act supports the aspirations of Māori and enables the Crown to deliver on its Treaty obligations in the charities context. This section includes discussion of issues for Post Settlement Governance Entities (PSGEs).
• Business – seeks feedback on issues relating to charities undertaking business activities. Issues include registration requirements for unrelated businesses and the potential risks to charitable funds when a charity establishes a business.

1 Members are listed on https://www.dia.govt.nz/charitiesreview
Advocacy – seeks feedback on what the limits on advocacy by charities should be, and on ways to clarify when advocacy purposes are charitable.

Officials will engage widely with the sector during the consultation period

21. In my May 2018 Cabinet paper, I indicated that consultation on the discussion document would take place in late 2018. Subsequently, key sector stakeholders indicated that many charities would be unable to engage fully in the lead up to the holiday period. To maximise the ability of charities to engage and develop submissions, I intend to release the discussion document in late February 2019, for consultation through to late April 2019.

22. Thorough public consultation will be essential to enable the diverse charities sector and the wider public, to convey their views on improving the Act. Sector representatives have emphasised the need to reach the full range of charities, including smaller charities with limited resources and those outside main cities.

23. Therefore, community meetings will be held in around 20 centres across the country. This will include hui specifically to gather the perspectives of iwi and Māori charities, including PSGEs, national Māori charities, and small charities (such as marae committees). Attention will also be given to reaching ethnic communities and Pasifika charities, as well as funders and professional advisers to charities.

24. A variety of approaches and networks (see paragraph 35) will be used to promote the community meetings and to encourage submissions.

The review touches on areas outside the Community and Voluntary Sector portfolio

25. Other initiatives, in particular the Tax Working Group and the reform of the Incorporated Societies Act 1908, have connections with this review. My officials are working with other agencies to ensure this work aligns.

26. The Tax Working Group interim report identified accumulation of funds by charities as an important issue that is best dealt with through the review of the Charities Act. The issue of accumulation is considered in the Obligations of charities section of the discussion document.

27. Nearly a quarter of all charities are also incorporated under the Incorporated Societies Act 1908. That Act is currently under review. My officials are working with officials from the Ministry of Business, Innovation and Employment to ensure the two legislative frameworks align as much as possible.

28. Given the reach of charities across diverse sectors and the variety of legal structures available to charities, submissions on the discussion document may raise issues that extend beyond the terms of reference and the Act. I will keep Ministers informed about any issues that are relevant to their portfolios.

Risks and mitigations

29. Table 1 below sets out areas where potential risks can be mitigated.

Table 1: Potential risks and mitigation in the consultation phase

<table>
<thead>
<tr>
<th>Potential Risk</th>
<th>Approach to manage risk</th>
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<tr>
<td>Persistent calls from some in the charities sector for a full first principles review of the Act</td>
<td>Officials will note that the fundamentals of the Act are basically sound, but that this is a major opportunity to consider a wide range of issues</td>
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Submissions raise policy issues that are outside of the scope of the review | The submission analysis will note submissions received that discuss issues outside scope Any operational feedback received will be passed on to the regulator

There is limited awareness or interest in public meetings and few submissions are received | Review information will be communicated through a wide variety of media, networks and meetings

Perspectives from Te Ao Māori are not sufficiently represented in the public submissions | Officials will develop specifically targeted messaging for iwi/Māori and hold targeted hui to encourage submissions

Perspectives from Pasifika and ethnic communities are not sufficiently represented in the public submissions | Government and non-government networks will be used to reach Pasifika and ethnic communities

## Consultation

30. The following departments and agencies were consulted on this paper: Crown Law Office; Inland Revenue; Ministry for Culture and Heritage; Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs; Housing and Urban Development); Ministry of Justice (Appeals, Courts and Tribunals; Māori Crown Relations); Ministry of Health; Ministry of Social Development (Communities; Seniors); Oranga Tamariki; Sport New Zealand; Statistics New Zealand; State Services Commission, Te Puni Kōkiri; the Treasury and the Department of the Prime Minister and Cabinet (Policy Advisory Group).

## Financial implications

31. The cost of the discussion document and associated community meetings will be met within the Department’s baselines.

## Human rights, disability and gender implications

32. Registered charities, including those focused on human rights, disability issues and gender, will be sent advice about the release of the discussion document.

## Legislative implications

33. I will develop policy proposals for Cabinet in 2019 if feedback on the discussion document identifies the need for legislative change. I am seeking a place for the Charities Amendment Bill in the 2019 legislative programme, with a priority 4 (to be referred to a select committee in the year).

## Regulatory impact analysis

34. The Regulatory Quality Team at Treasury agrees that no formal Regulatory Impact Assessment is required in support of the proposal to issue a discussion document on the review of the Charities Act. A Regulatory Impact Assessment is likely to be required on any policy proposals that arise from consultation.
Publicity and proactive release

35. Subject to Cabinet approval, I intend to circulate a press release in February 2019 announcing the beginning of the consultation period and launch of the discussion document. Announcements will be sent to all charities listed on the charities register, and through various networks including those of the Core Reference Group, Department of Internal Affairs’ community advisers, Te Puni Kōkiri, Ministry of Pacific Peoples and the Office of Ethnic Affairs. Information will also be sent to professional groupings that work with charities such as fundraisers, accountants and lawyers.

36. In addition to community meetings, a range of other channels will be used to support engagement and encourage submissions. For instance, these could include postings on social media and notices in key sector newsletters.

37. I intend to proactively release and publish this paper within 30 business days of final decisions being taken by Cabinet, subject to consideration of any redactions that would be justified if the information had been requested under the Official Information Act 1982.

Next Steps

38. If agreed, the discussion document will be released in February 2019. Public submissions will be analysed from May 2019, and I intend to report back to Cabinet on policy proposals in late 2019.

Recommendations

39. The Minister for the Community and Voluntary Sector recommends that the Social Wellbeing Committee:

1. note that Cabinet agreed in May 2018 that a review would be undertaken of substantive issues related to the Charities Act 2005, to determine whether the Act is effective and fit for purpose [SWC-18-MIN-0058];

2. agree to the release of the attached discussion document for public consultation from February to April 2019;

3. note that, to ensure input from a wide range of charities, iwi and Māori, consultation on the discussion document will involve broad outreach including community meetings around the country;

4. authorise the Minister for the Community and Voluntary Sector to make minor technical and editorial changes to the discussion document prior to its release; and

5. note that the Minister for the Community and Voluntary Sector intends to seek approval to policy proposals later in 2019.

Authorised for lodgement

Hon Peeni Henare

Minister for the Community and Voluntary Sector