Terms of reference to review the Charities Act 2005

Context of review

Charities form a significant part of New Zealand’s not-for-profit sector. With more than 27,000 registered charities, the charitable sector makes an important contribution to New Zealand society, founded on the Treaty of Waitangi.

In 2001 the Government announced its intention to introduce registration, reporting and monitoring requirements for organisations claiming charitable status. A working party of charitable sector representatives was appointed and recommended that a Charities Commission be established and provided powers to register, monitor, assist and educate charities. The Charities Act (Act) was enacted in 2005, with the aim of promoting public trust and confidence in the charitable sector.

Over ten years have passed since the first charity was registered under the Act. Significant change has taken place in that time. This includes: changes in the charitable sector’s wider operating environment (for example, increasing pressure on volunteers); the disestablishment of the Charities Commission and establishment of the independent Charities Registration Board; the introduction of financial reporting standards for registered charities; and a new tax that applies to deregistered charities.

The legislative regime promotes public trust and confidence in the charitable sector through its treatment of charitable entities, and through the regulator’s actions. Charitable entities can voluntarily apply for registration, which brings both benefits and obligations. For example, charities must report annually and that information is publicly available. The regulator also has responsibilities including registering charities, maintaining a charities register, providing education and assistance, and monitoring compliance.

The Government considers the fundamentals underpinning the Act are fit for purpose. 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.

Stakeholders in the charitable sector have sought a review of the Act for a number of years. The Government agrees that it is timely to review whether the Act is working effectively for the charitable sector, volunteers, our communities (including Māori) and the wider public, the Government, and others with an interest. The review will take into account the experiences of stakeholders over the last 13 years, and lessons from other jurisdictions.

Purpose of the review

The purpose of the review is to ensure that the Act is effective and fit for purpose. This comprehensive legislative review will focus on substantive issues arising under the Act, while recognising and building on the Act’s strengths.
Scope of the review

Matters within scope

Substantive policy matters within the scope of the review are:\(^1\)

1. Matters relating to additional purposes of the Act
   - Whether any additional purposes of the Act are necessary (while recognising that the Government considers the fundamentals of the Act are fit for purpose).

2. Matters relating to the regulatory framework
   - The role, functions, structure, powers, accountability and appeal ability of the charities regulator (currently, the independent Charities Registration Board and the Department of Internal Affairs – Charities Services);
   - The purpose and content of the publicly-accessible charities register;
   - Funding for the regulator to administer the legislation (including the mix of Crown funding and fees from the charitable sector);
   - Mechanisms to challenge or appeal decisions of the charities regulator, including decisions over the interpretation of ‘charitable purpose’, and to support the development of case law;
   - Offences and penalties. For example, creating intermediate sanctions as alternatives to deregistration, or issuing penalties after an entity has been deregistered but before it is wound up; and
   - Regulation of third-party fundraisers (that is, professional fundraisers or commercial operators that fundraise on behalf of a charity).

3. Matters relating to registration and deregistration
   - Registration requirements (not including the definition of ‘charitable purpose’), and the ability to backdate the registration of an entity;
   - Deregistration requirements;
   - The extent to which businesses that solely raise funds for registered charities can register under the Act; and
   - The extent to which registered charities can advocate for their causes and points of view.

4. Matters relating to the obligations of registered charities
   - The obligations of registered charities; and
   - The obligations of individuals on governance boards and in senior management roles in registered charities, including looking into governance standards for registered charities.

\(^1\) While this list of fourteen bullet points is comprehensive, the list does not identify all of the specific issues that could fall under each bullet point (e.g. bullet point two would cover more specific issue of regulator’s independence). Further exploration will occur during the review.
5. Links to other legislation

- The interface between the provisions of the Act, and provisions in the Incorporated Societies Act 1908 (and proposed Incorporated Societies Bill), Charitable Trusts Act 1957 and the Trusts Bill (with the aim of better alignment).

Matters outside of scope

As a legislative review focussing on substantive policy issues, operational issues fall outside of scope.

The following matters are also outside 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.

While tax exemptions sit outside scope of this review, the Tax Working Group may consider the tax treatment of charities in its work. Any interim findings of the Tax Working Group relevant to charities would be considered as part of this review.

Governance arrangements for decision-making on the review

The Minister for the Community and Voluntary Sector (the Minister) will be the key decision-maker on the review, subject to decisions that require Cabinet approval.

The Minister will engage with the Attorney-General, and others whose portfolios are touched by this review. This includes the Ministers of Finance; Revenue; Commerce and Consumer Affairs; Justice; Housing and Urban Development; and Health. It also includes the Ministers for Māori Development; Arts, Culture and Heritage; Social Development; Children; Seniors; and Sport and Recreation.

The Department of Internal Affairs (the Department) is the lead agency. The Minister for the Community and Voluntary Sector will provide strategic direction to the Department of Internal Affairs.

Working level arrangements

The Department of Internal Affairs will work closely with:

(a) a Core Reference Group (CRG);
(b) the regulator; and
(c) other government officials (including those supporting the Tax Working Group).

At key points, the Department will also seek input from:

(d) the Sector User Group (SUG); and
(e) the wider charitable sector, and members of the public.

The diagram below shows the governance and working level arrangements:
(a) Core Reference Group – role and six member composition

CRG’s role will be to work with the Department to identify issues and possible solutions, within the scope of this review. With the group’s small size, it is also intended that the Department will be able to test ideas with this group, before the Department advises the Minister.

CRG is intended to comprise six people, who bring a variety of perspectives and experiences. Given the size and reach of the charitable sector, the intention is to bring together the broadest possible range of views, skills and experiences.

SUG will be asked to appoint three of its members to CRG. SUG is an established group of 25 member organisations that provides broad representation from the charitable sector. The Department of Internal Affairs expects the three SUG members who join CRG to seek SUG’s input, and the Department will also look to use SUG at key points.

The Department will also look to invite three members onto CRG. The intention is these members bring diverse views, skills, and/or experiences, including Te Ao Māori perspective, and the perspective of small charities.

(b) Regulator

The regulator is the three member independent Charities Registration Board, and also Charities Services (within the Department of Internal Affairs).

(c) Other government officials

The Department will also look to work closely with officials from the Treasury and Inland Revenue (including those supporting the Tax Working Group); officials from the Ministry of Business, Innovation and Employment; Ministry of Justice; Ministry for Culture and Heritage; Te Puni Kōkiri; Sport and Recreation New Zealand; Ministry of Health; Ministry of Social Development; Oranga Tamariki; and the Crown Law Office.

(d) The Sector User Group

As described earlier, CRG would seek SUG’s input, and the Department would also look to use SUG at key points.

(e) The wider charitable sector, and members of the public

The involvement in the review of the wider charitable sector and the public will also be crucial. For example, public submissions on an options document will be sought, as well as workshops on key issues. Public submissions would also usually be called for by select committee if a Bill was to amend the Act.
**Timeframe for the review**

The review is expected to take between two to three years. This review is expected to start when the Minister seeks, and Cabinet approves the review’s terms of reference in early 2018. It is expected to finish with the passing of a Bill to amend the Act.

The table below outlines an indicative timeline:

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<thead>
<tr>
<th>Phase</th>
<th>Timing</th>
<th>Review activities/steps</th>
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<tbody>
<tr>
<td>One</td>
<td>Dec 2017 – May 2018</td>
<td>Develop draft terms of reference, then test and revise</td>
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<td></td>
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<td>Cabinet approval of final terms of reference</td>
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<td>Publicly announce review</td>
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<td>Two</td>
<td>May 2018 – August 2018</td>
<td>Identify issues and possible solutions, to help inform options development</td>
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<td>Cabinet approval of an options document</td>
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<tr>
<td>Three</td>
<td>August 2018 – Dec 2018</td>
<td>Consult and receive submissions on options document</td>
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<td>Develop policy</td>
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<td>Cabinet approval of policy decisions</td>
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<td>Four</td>
<td>2019</td>
<td>Development of draft legislation</td>
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<td>Five</td>
<td>2020</td>
<td>Passage through the House of a Bill to amend the Act</td>
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