Modernising the Charities Act 2005
Quick read
February 2019
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This quick read 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
View the full discussion document and find out how to have your say at www.dia.govt.nz/charitiesact.

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

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.

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 the discussion document.

Selection of 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, social services 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 the discussion document.

Obligations: are current requirements for remaining on the register working?
Charities’ obligations need to be clear and manageable for charities 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 accumulate considerable funds (or other assets) over many years. There are often 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?
• 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 the discussion document.

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

The regulator’s role, functions, and powers under the Act are important because they enable it to promote public trust and confidence in the charities sector and to encourage the effective use of charitable resources.

The regulator comprises two bodies: the Charities Registration Board (Board) made up of three members, and Charities Services (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 concerns 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?
• What is driving concerns over the independence of decision-making by the regulator?

Find out more on pages 25 to 33 of the discussion 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 a decision of the Board to the High Court (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 the discussion 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?
• Are you aware of any cases where an iwi settlement organisation has limited its activity because of its charitable status?
• Are you aware of any problems with the reporting requirements for Māori charities?

Find out more on pages 38 to 40 of the discussion 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 the discussion 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:

• 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?

Find out more on pages 46 to 50 of the discussion document.

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**What is not within scope?**

This modernisation work is not looking at the following 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](http://www.dia.govt.nz/charitiesact).

**Make a written submission**

To have your say, make a written submission by 30 April 2019. Download a submission form from [www.dia.govt.nz/charitiesact](http://www.dia.govt.nz/charitiesact).

Your submission 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 comment. You will then have the opportunity to have your say on specific proposals.

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