

Template Submission - Charities Review

Introduction

This document provides you with a **template submission** on the Government's review of the Charities Act 2005. This is for you to use and adapt should you wish to support the key points that we raise in the Philanthropy New Zealand submission. Note that we have more detail in Philanthropy New Zealand's final submission - available [here](#).

The more voices on the key issues, the better. Our collective voice will then have a bigger impact when the submissions are analysed by the government and then considered by the Minister.

The Government is reviewing the Charities Act 2005 through the Department of Internal Affairs (DIA). The terms of reference for DIA's review are available [here](#) and the Charities Review discussion document is [here](#).

How to send a submission and when?

A submission does not need to follow a specific format, but the template letter submission in the Appendix will be easy to copy, paste, fill in the gaps / replace the highlighted sections, and email or post.

The date for submissions has recently been extended to **31 May 2019** and submissions can be made either:

By Email: charitiesact@dia.govt.nz

Or

By Post:

Charities Act Team, Policy Team
Department of Internal Affairs
PO Box 805
Wellington 6140

Template

To:

Hon Peeni Henare, Minister of Community and Voluntary Sector
Paul James, Chief Executive, Department of Internal Affairs

By Email: charitiesact@dia.govt.nz

Cc: peeni.henare@parliament.govt.nz

Dear Minister Henare and Mr James

Submission on the Review of the Charities Act 2005

1. This submission is from [NAME OF YOUR ORGANISATION / NAME OF PERSON SUBMITTING IF AN INDIVIDUAL] on the Government's review of the Charities Act 2005 ("the Act"). [Optional: You could explain your interest in the Charities Act - for example, are you funding charities or a charity yourself? How long you have been operating? The number of staff, the projects you are supporting or the amount you give in donations?]
2. Our organisation is a member of Philanthropy New Zealand ("PNZ") and we would like to express our support for their submission. In particular, we would like to emphasise the following key points [Note, this is optional. You could just simply state your support for our submission. Or you could include all of the points below, or pick the most important ones for you / your organisation]:

Process Issues

3. We agree with PNZ's submission that the process for this review has been rushed and the independence of the findings will be compromised by having the Department of Internal Affairs ("DIA") leading the review. DIA is responsible for the administration of the Act and houses the regulator under the Act - Charities Services. The Act needs to be reviewed by an experienced independent reviewer.
4. We agree with PNZ's recommendations that when this first stage of public consultation is complete, the review should be referred to the Law Commission, along with any public submissions received. This would also require a longer timeframe - rather than trying to squeeze the introduction of a Bill within the current electoral cycle. Given the importance of the Act supporting the third sector - and the many social, economic and environmental outcomes - we also recommend that there is a periodic review of the Act [written into the legislation] to ensure it remains up-to-date and fit for purpose.

Policy Issues

First Principles Review

5. We support the point made in PNZ's submission that the review should have been a "first principles" review. The scope of the current review is too limited and needs, for example, to include a review of the definition of "charitable purpose" in the Act.
6. Rather than starting the policy thinking with trying to identify what the problems are in the charitable sector (with the sub-text being how can we regulate these problems away), the starting point should be asking questions like:
 - What is working well and how can we help? How can we better work in partnerships with the charitable sector and philanthropic funders, for example, to deliver New Zealand's commitments to the United Nations Sustainable Development Goals (including SDG 17 - Partnerships); and
 - How can we empower the sector? And promote the good work that the sector is doing? What does the sector need? What is the potential of the sector that is currently being undermined or marginalised? Are there ways to reduce the compliance burden without exposing funders, beneficiaries or the public to risks?

Charities Services

7. We agree with PNZ's strong recommendation that Charities Services be made a crown entity that operates at arm's length from the Government and Department of Internal Affairs, as was the legal position with the former Charities Commission. It is important that this body both operate, and be seen to operate, independently. The best model for this would be an independent Crown entity - see the State Services Commission's [advice](#)¹.
8. We also agree that there needs to be a stronger role for Charities Services in providing education and support to the sector. Many of the smaller charities struggle with understanding the reporting requirements and Charities Services has the potential to promote the importance of charitable giving, raise the profile of the sector in the community, to promote best practice, and to work with the sector and government agencies to promote the use of its resources - such as the type of information that can be gained from the charities register (and pre-populated in other agency forms) and sharing data.

¹ <http://www.ssc.govt.nz/cegmos4>.

Micro-charities

9. We agree with PNZ that there should be a new micro-charity tier - with more assistance given to small charities to complete any reporting requirements. As noted above, we also strongly recommend that efficiencies in reporting be found for all charities.

Advocacy by charities

10. We strongly support PNZ's comments that there needs to be changes to the law to ensure that charities can advocate without fear of losing their charitable status. This should not extend to promoting political parties (i.e. advocating a partisan preference) but should, for example, enable charities to share an evaluation of party policies that connect to the purpose, activities or operation of their charity.

Binding decisions - Charities Services

11. We agree with PNZ that there needs to be more certainty for the sector about the types of decisions that Charities Services will make before they happen. We support the "binding decisions" model that is currently used by IRD for tax decisions. These are publicly available, and show how IRD will consider and decide on particular issues - with the intention that this will be applied consistently across organisations. This model does not take away any appeal rights but potentially helps to reduce the need for challenging decisions by providing guidance and transparency.

Appeals from decisions of Charities Services

12. We also agree with PNZ that there needs to be changes to the appeal system and timeframes for appeals under the Act. In particular, we agree that the system should be based on the following principles:
 - Fair
 - Low cost
 - Certainty
 - Independence
 - Accessible
 - Natural justice
 - Participatory - so charities have a right to speak and provide supporting evidence
13. In terms of timeframes, 20 days is not sufficient time for a charitable organisation to bring an appeal of a decision (section 59 of the Act). In other civil law jurisdictions there are longer timeframes. For example, a decision from the first tier Employment Relations Authority to the Employment Court needs to be lodged within 28 days of receiving the tribunal's decision.

14. Given the significant financial impact of deregistration for a charity - and to also provide more certainty for funders of charities - we strongly recommend that the charitable status of a charity remains in place until all appeal decisions have been exhausted.

Yours sincerely,

NAME OF PERSON SIGNING OFF THE SUBMISSION
NAME OF YOUR ORGANISATION (WHERE RELEVANT)
Email: CONTACT EMAIL
Ph: CONTACT PHONE