



Charities Act Team
Policy Group
Department of Internal Affairs

Via email to: charitiesact@dia.govt.nz

29 May 2019

RE: Modernising the Charities Act 2005 Discussion Document

ComVoices is a Wellington based network of national community and voluntary sector organisations. It was established so that sector organisations would have a more powerful voice at Government level and in the community. Our 28 members represent a broad cross section of organisations whose members provide services across New Zealand.

ComVoices welcomes this review of the Charities Act 2005. We appreciate the decision to extend the submission timeframe and the numerous events held across New Zealand to inform Charities about the issues raised in the discussion document. The Act is of great interest to ComVoices as many of our members' organisations are registered Charities. These members will provide their own submissions on the issues of greatest importance to the work they do. This submission is limited to a select few over-arching topics which have the greatest impact on all Charities.

The Charitable sector wants a better relationship with Government. We feel that the Act as currently interpreted and administered is inhibiting our ability to maximise benefits to society. The organisation set up to monitor the sector has evolved beyond that role to become more of a regulator. The current compliance regime is making it hard to recruit and retain governance members, especially in finance/treasurer roles. We also know that the 90% of Charities with no staff, which are the smallest and least risky organisations, face the highest burden to comply and therefore have the lowest rates of compliance.

The fundamental concern we have with the approach taken in this review is that the Terms of Reference for are too narrow. The Charitable sector has long sought a first principles review of the Act to clarify what exactly is the purpose of the regime. The desire is for an Act which is fit-for-purpose in the modern world, provides clear accountability and better boundaries to ensure the definition is not subject to being distorted through mis-interpretation. As this approach has been rejected¹, we believe the current review will not resolve our concerns.

We believe that a new approach is required and that stewardship of the charitable sector would best be performed by establishing an Independent Crown Entity.

¹ <https://www.dia.govt.nz/Modernising-the-Charities-Act-2005---Questions-and-Answers>

Modernising the Charities Act 2005 is not an easy task. The Discussion Document raises a wide variety of complex legal and technical issues. Many of these require specialist knowledge of law and tax. We believe that an independent body should be tasked with providing such an analysis. Therefore, ComVoices calls upon Government to engage the Law Commission to provide an independent review, as was completed for Incorporated Societies² and Trusts³. We believe an independent Law Commission review will be more cost effective in the long run for both Government and Charities. The public consultation process that has been undertaken can provide valuable information to inform the Law Commission's review.

The current settings for appeals are unwieldy and not fit for Charities to access effectively. We believe Charities should be provided an effective right of appeal and the opportunity to appeal all decisions, not just those related to registration/deregistration. The current timeframe of 20 working days to appeal is too short. Compounding this short time to choose to appeal is that appeal is made to the High Court. Appealing to the High Court is expensive and can be intimidating to smaller charities. An additional option to resolve concerns with decisions should be created. We note that for tax disputes, the hearing authority allows taxpayers a choice of appeal through the Taxation Review Authority or the High Court. Establishing a Charity Tribunal based on the tax model will enable a less formal and lower cost process in which a Charity can represent itself.

Another fundamental problem of the current settings for appeals is the inability to have an oral hearing of evidence ('trier of fact'). In practice, the High Court is only permitted to consider material that was presented to Charities Services before it made its decision, with no ability for a charity to test inferences and assumptions drawn from Charities Services' internet searches, to give evidence orally or to provide additional evidence following the Charities Registration Board's decision. The current process effectively denies Charities access to justice and is distorting New Zealand law regarding Charities. We request that the Act be amended to provide clarity that the nature of the hearing to be conducted on appeal is a full oral hearing of evidence, if either party so requests, whether it is to the Charity Tribunal proposed above, or to the High Court.

The approach to advocacy by Charities Services and the Department of Internal Affairs in the Discussion Document is deeply concerning. Advocacy is an *activity* which a Charities undertakes to fulfil its charitable purpose, not the purpose itself. Advocacy is inseparable from the work Charities perform. Charities have a duty to advocate for the people/clients they represent. It is irrational to restrict advocating for policies which would alleviate the need for charity to be provided in the first place. This is an infringement on Charities' freedom of expression that is out of step with other established democracies. (NOTE: We agree that partisan political activity is not allowable).

Kind regards,



Chris Glaudel, Chair
ComVoices

² <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R129.pdf>

³ <https://www.lawcom.govt.nz/our-projects/law-trusts>