



# Community and Voluntary Sector aide memoire

Hon Priyanca Radhakrishnan  
Minister for the Community and Voluntary Sector

Title: **Modernising the Charities Act: oral item update to the Cabinet Social Wellbeing Committee on 17 March 2021**

Date: 3 March 2021

## Key issues

This aide memoire provides information on the work to Modernise the Charities Act 2005 to support your oral item at the Cabinet Social Wellbeing Committee (SWC) on 17 March 2021.

Action sought	Timeframe
Send a request to raise the oral item to the Cabinet Office, with the template attached at Appendix D	By 10.00am, 11 March 2021
Note the contents of this oral item for the SWC meeting 17 March 2021	Prior to SWC on 17 March 2021
Share your intentions for this work with the Minister of Revenue (a draft letter will be provided for your consideration)	By 18 March 2021

## Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Suzanne Doig	General Manager Policy	9(2)(a)	✓
Jayne Beggs	Policy Manager	9(2)(a)	

Return electronic document to:	9(2)(a)
Cohesion reference	6EYAVYC5ZNWP-127011824-315
Ministerial database reference	CVS202100031

Suzanne Doig  
General Manager Policy

## Purpose

1. This aide memoire supports your oral item at the Cabinet Social Wellbeing Committee (SWC) meeting on the 17 March 2021. Your oral item updates SWC on the work to modernise the Charities Act 2005 (the Act). Attached is:
  - a) an oral item paper to table at SWC, outlining your proposed approach to modernising the Act in **Appendix A**;
  - b) talking points to support the oral item in **Appendix B**;
  - c) suggested responses to possible questions from SWC members in **Appendix C**; and
  - d) Cabinet Committee Oral Item Request Template in **Appendix D**.

## Background on the oral item

2. Cabinet made initial decisions on the scope of the work to modernise the Act in 2018. You have confirmed you wish to continue with this work as a priority for your portfolio. The oral item is an opportunity to update SWC on your intentions for this work including:
  - a) that you intend to make practical improvements to the Act;
  - b) that you are taking a staged approach to focus on addressing the more pressing and practical issues for the sector as the priority. Stage one considers:
    - charities' obligations (including reporting requirements);
    - the regulator's powers and decision-making;
    - the accessibility of appeals; and
    - charities' accumulation of funds and business activities;
  - c) that you will consider a process for stage two next year which will focus on the remaining matters from public consultation including advocacy by charities; and
  - d) that you will seek policy decisions from Cabinet on reporting requirements for charities, and charities accumulation of funds and business activities in June 2021. You will take the remaining issues to Cabinet in December 2021.
3. Your office will need to submit a request to Cabinet Office to present the oral item by 10.00am, Thursday 11 March 2021, and submit the oral template form (Appendix D).
4. The Minister of Revenue is not a member of SWC. Given the Minister's interest in the tax component of the work, we suggest you also update the Minister of Revenue on your intentions for this work. We can draft a letter for you to enable this.
5. We will provide advice on policy options for reporting requirements for small charities, and an engagement plan which includes details about publicly announcing the work in the week beginning 15 March 2021.

**Hon Priyanca Radhakrishnan**  
**Minister for the Community**  
**and Voluntary Sector**

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**Appendix A: Oral item Cabinet Social Wellbeing Committee 17 March 2021 -  
Modernising the Charities Act 2005**

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## Oral item - Cabinet Social Wellbeing Committee: Modernising the Charities Act

### ***The Charities Act provides a registration, reporting and monitoring system to support public trust and confidence in charities***

1. More than 27,000 charities are registered under the Charities Act (the Act). Charities spend around \$18 billion annually on charitable purposes and manage \$65 billion in assets. Some charities are widely known, such as Plunket Society or the Salvation Army. Many more are small charities that make a huge difference in communities, from maintaining marae to running toy libraries.

### ***I intend to resume policy work to modernise the Charities Act***

2. Modernising the Act is about enabling the charities sector to thrive and to continue their valuable contribution to community wellbeing and social cohesion.
3. I intend to start by making practical improvements. To do so requires careful balancing of principles like transparency with the compliance burden that small charities face from extensive annual reporting. I will take a balanced approach to looking at the business activities charities are involved in, while being mindful that the sustainability of some charities is directly related to running successful businesses.

### ***A staged approach to deliver change and to pass an amendment bill this term***

4. I will build on and progress the work that my colleagues launched last term. In 2019, wide-ranging and passionate views came through on the Act, through 27 community meetings and 363 submissions on a discussion document.
5. In restarting this work, I will shortly announce stage one. Stage one will lead to an amendment bill this term for a number of key areas publicly consulted on last term.
6. Stage one looks at: charities' obligations; the regulator's powers and decision-making; the accessibility of appeals on decisions; and charities' accumulation of funds and business activities. Progressing the remaining matters consulted on last term, such as advocacy by charities, is important. I will investigate a process for stage two next year.

### ***Targeted engagement before taking the first set of policy proposals to Cabinet***

7. Policy development and testing with key stakeholders will focus first on small charities' reporting requirements, and charities' accumulation of funds and business activities. I intend to take the first set of policy proposals to Cabinet in June 2021. I will then return to Cabinet in December 2021 with the remaining policy issues for stage one. I will ensure that Ministers with portfolio interests in this work are kept informed of progress.

### ***Recommendation***

8. It is recommended that the Cabinet Social Wellbeing Committee:
  - 8.1. **notes** that the Minister for the Community and Voluntary Sector intends to resume work to modernise the Charities Act 2005;
  - 8.2. **notes** that stage one of this work focuses on more practical issues to improve the operations of the charitable sector with fundamental matters to be considered as part of a later stage; and
  - 8.3. **notes** that the Minister for the Community and Voluntary Sector intends to publicly announce the resumption of the work to modernise the Charities Act 2005 shortly.



## **Appendix B: Talking points for Cabinet Social Wellbeing Committee on 17 March 2021: *Modernising the Charities Act***

### ***Inform and update on the work to modernise the Charities Act***

- I want to update you on the work to modernise the Charities Act that my colleagues launched in the previous term.
- In 2018 we began to look at how well the Act is working. We gained extensive information from public consultation in 2019 about the issues and opportunities that charities face.
- There are more than 27,000 charities registered under the Charities Act. As we know, charities contribute hugely to the strength of communities across New Zealand – in sports, the arts, health, and other countless activities that make a real difference to people’s lives.

### ***My aim is to progress the modernisation of the Charities Act to deliver real world benefits***

- Given the significance and contribution of the sector to communities, I am keen to continue this work, and I am committed to achieving practical improvements this term.
- My goal is to pass legislative amendments to modernise the Act by 2023.
- The modernisation work will ensure that the Charities Act:
  - is effective and fit for purpose;
  - promotes continued public trust and confidence in the charitable sector; and
  - helps deliver real world benefits to charities.

### ***Taking a staged approach to deliver more practical benefits first***

- To deliver real change and benefits, a staged approach is important. Most charities are small and are trying to meet their obligations, but the balance between the compliance burden and transparency needs addressing.
- Stakeholders were consulted on a wide range of matters in 2019.
- Stage one will lead to an amendment bill, and will look at:
  - the obligations that charities have under the Act, including the annual reporting requirements that small charities face, as well as the duties for officers of charities;
  - the regulator, in the sense of its powers, accountability and decision-making under its current structure (being the independent Charities Registration Board and Charities Services within the Department of Internal Affairs);
  - the accessibility of appeals within the current structure of appeal bodies; and
  - charities’ business activities and their accumulation of funds.
- I will consider a process for stage two next year, but it will focus on the remaining matters from public consultation. This means:
  - any additional purposes that might be appropriate for the Act;
  - Te Ao Māori (in the sense of more fundamental consideration beyond the Te Ao Māori lens that will be applied to all of the stage one matters); and
  - where the line is for advocacy by charities.

### ***Next steps***

- I plan to announce my decision to resume work on modernising the Charities Act in the near future.

- I will return to you in June and December this year for policy decisions on stage one matters.
- The first set of policy decisions will be on the objectives for this work, the reporting requirements for small charities and the business and accumulation activities charities are involved in. My officials will carry out targeted consultation with key stakeholders to test and refine the proposals ahead of Cabinet consideration.
- I will keep you informed at key points, as the diverse activities that charities perform overlaps with many of your portfolio interests. Revenue is one portfolio that this work overlaps particularly closely with, as charities receive favourable tax treatment.
- I look forward to continuing to work together on modernising the Charities Act.

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## Appendix C: Suggested responses to possible questions from SWC members

### Significance and scope of this work

1. *Why is this work important?*

- The community sector is diverse and complex, and forms a vital part in our society.
- Modernising the Charities Act by delivering some practical improvements will achieve real world benefits for the community sector.
- Public consultation showed there are significant issues to address, like the compliance burden small charities face through reporting obligations.

2. *Are you looking at contracting arrangements for government services?*

- No, this is a legislative review of the Charities Act.

3. *Is this a first principles review of the Act?*

- No, key concepts underpinning the Act - particularly a registration, reporting and monitoring system for charities - remain sound.
- This work is about addressing substantive issues, while building on the Act's strengths.
- Overall, this work continues to be guided by the 2018 terms of reference that went to Cabinet and is not about starting from scratch. <sup>9(2)(f)(iv)</sup>

4. *Why are these issues out of scope for stage one?*

- **Charitable purpose.** 'Charitable purpose' (meaning the relief of poverty, advancement of education or religion, or any other matter beneficial to the community) was excluded from the work launched in 2018, and was therefore not publicly consulted on in 2019. Charitable purpose can and does continue to evolve through case law. Charitable purpose triggers strong views and opinions, and any process to consider it would need careful planning.
- **Advocacy.** Clarity is important on where the line is drawn when charities advocate. With an advocacy case currently before the courts, I intend to consider advocacy in stage two. Charities Services advise me they are also working to improve sector understanding and application of the current law.
- **Te Ao Māori.** Te Ao Māori lens will be used throughout this work. The issues specific to iwi/Māori charities will be picked up under the topics as needed. Any process to consider Te Ao Māori in light of the more fundamental matters (like the meaning of 'charitable purpose' that derives from 400 years of case law) would need careful planning.
- **Structure of regulator or appeals mechanism.** <sup>9(2)(f)(iv)</sup>

<sup>9(2)(f)(iv)</sup>

9(2)(f)(iv)

**Timing/engagement/process**

6. *Why do targeted engagement, and not public consultation during the upcoming policy development phase?*

- Public consultation from 2019 provided a wealth of information about the issues and opportunities that charities face, as well as the views of individuals, broader not-for-profits and others.
- This base forms a solid foundation to work from, and will be added to by targeting our engagement on specific policy proposals to key stakeholders most likely to be affected.

7. 9(2)(f)(iv)

8. 9(2)(f)(iv)

**Connections between this work and other portfolio interests**

9. *How do you intend to manage any crossovers between this work and other portfolio interests?*

- Close connections at the officials' level and at the Ministerial level will be important, as the Charities Act is not the only legislation that affects charities.
- For example, registered charities structured as incorporated societies would, in time, be affected by the Incorporated Societies Amendment Bill if it progresses through the House to enactment.
- Tax is another area of importance, where registration as a charity provides tax benefits. I have written to the Minister of Revenue to inform him of my plans for this work and will continue to keep him informed, as appropriate.

**Substance of policy areas for the first phase of stage one**

10. *What are you considering when looking at charities' business activities?*

- Business income is important to the financial sustainability of many charities.
- Charities can run businesses, if the profits only go to charitable purposes.
- An issue that may need further consideration is, for example, the risk that charitable funds are not used for charitable purposes (e.g. a charity putting money into a failing business).

*11. What are you considering when looking at charities' accumulation of funds?*

- Accumulation of funds is usually a good thing e.g. a charity saving for a new community facility or growing assets to benefit current and future generations (including iwi and hapu charities that hold settlement assets).
- An issue that may need further consideration is the risk to charitable funds where charities without explanation accumulate significant funds over time, distributing little or nothing to charitable purposes.

*12. Are you looking at reporting requirements of small charities?*

- Yes, we are considering whether the compliance burden on those very small charities is appropriate and how this could be balanced with the need for transparency in the use of charitable funds.

*13. What other areas will you look at in stage one?*

- I will look at the role of the regulator. This will include looking at the regulator's powers, accountability and transparency to the sector and the public. For example, looking at potential enforcement tools available to the regulator where officers are not meeting their obligations.
- I will look at the accessibility of the appeals process within the current structure.

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## Appendix D: Template for an oral item request

Oral items can be used by a Minister to brief or update Cabinet on a matter of particular urgency, sensitivity, or significance, or to test preliminary support for a proposal. They can also be used at Cabinet committees to provide a brief update on a significant work programme or issue. Oral items **should not** be used to seek decisions in lieu of submitting a Cabinet paper.

If a Minister wants to bring an oral item to Cabinet or a Cabinet committee, then their office must email the below form to the Cabinet Office, with all sections filled out. Note that the information in this form will be provided to Cabinet or committee Ministers to give context about the nature and purpose of the item.

Any additional supporting information (if required), such as a summary one-pager or A3 document, should also be provided to Cabinet Office with the oral item form when the request is made.

### **Instructions for using the form:**

- *Select the entire form*
- *Copy the entire form*
- *Paste the entire form into the body of an email*
- *Fill in the form in the email*
- *Copy the email address [cabpapers@dpmc.govt.nz](mailto:cabpapers@dpmc.govt.nz) into the "to" line of the email*

*State in the email subject line if the item is for Cabinet or a Cabinet committee*



*Send the email*

### **Oral Item Request**

[SEEMAIL]

<b>Name and portfolio of Minister:</b>	Hon Priyanca Radhakrishnan, Minister for the Community and Voluntary Sector
<b>Confirm that Minister has requested this item:</b>	Check box to confirm <input type="checkbox"/>
<b>Is the item for Cabinet or a Cabinet committee?</b>	(SWC) Cabinet Social Wellbeing Committee
<b>Meeting date:</b>	17 March 2021
<b>What is the subject of the item?</b>	Modernising the Charities Act
<b>What is the nature and purpose of the item?</b>	The Minister wishes to advise SWC of her intention to continue the work to modernise the Charities Act 2005, and her proposed approach to the work.
<b>Will any additional supporting information be provided to support the item?</b>	A paper will be tabled at SWC
<b>Classification:</b>	In Confidence
<b>Minister's office contact name and number:</b>	[Filled by Office]

# Community and Voluntary Sector briefing

**Hon Priyanca Radhakrishnan**  
**Minister for the Community and Voluntary Sector**

**Title: Modernising the Charities Act: Communications and stakeholder engagement**

**Date: 19 March 2021**

## Key issues

This briefing provides communication material, including a draft media release, to announce the resumption of work to modernise the Charities Act 2005. While we understand that Cabinet Social Wellbeing Committee confirmed the scope and sequencing of this work on 17 March 2021, we recommend also informing the Minister of Revenue of your decision to resume work ahead of any public announcement.

This briefing also advises you of the key stakeholders the Department intends to engage with during policy development. The engagement will be targeted to obtain the expertise needed. Upcoming consultation on policy options will be important ahead of the first set of Cabinet decisions in June 2021, and is an expected input ahead of draft legislation.

Action sought	Timeframe
Agree to a media release announcing that work to modernise the Charities Act 2005 is resuming	Week beginning 22 March 2021
Notify the Minister of Revenue of your decision to resume this work	

## Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Sela Finau	Policy Director	9(2)(a)	✓
Louise Cooney	Senior Policy Analyst	9(2)(a)	

  

Return electronic document to:	9(2)(a)
Cohesion reference	6EYAVYCSZNWP-127011824-326
Ministerial database reference	CVS202100046



## Purpose

1. This briefing provides proposed communications to announce that work is resuming to modernise the Charities Act 2005 (the Act). This briefing also advises you of the Department of Internal Affairs' (the Department's) proposed approach to stakeholder engagement for this work, ahead of the first set of Cabinet decisions in June 2021. Included in this briefing is:
  - 1.1. a draft media release announcing that work is resuming to modernise the Act (**Appendix A**);
  - 1.2. draft talking points to support you with the media release (**Appendix B**);
  - 1.3. a letter to update the Minister of Revenue on work to modernise the Act (**Appendix C**); and
  - 1.4. the key stakeholders the Department intends to engage with during policy development (**Appendix D**).

## Announcing the resumption of work to stakeholders and the wider charities sector

2. You have decided to resume the work commenced in 2018 to modernise the Act [briefing CVS202000231 refers]. You have an opportunity to publicly announce your decision, and to share with key stakeholders how you wish to progress the work.
3. We suggest a media release as a positive way to communicate your decision to resume the work. Given the strong levels of engagement during public consultation in 2019, we anticipate much of the sector will be keenly interested in this work resuming.
4. **Appendix A** contains a draft media release for your consideration. We understand that Cabinet Social Wellbeing Committee (SWC) confirmed the scope and sequencing of this work on 17 March 2021. In addition, with your follow up meeting scheduled for 22 March 2021 with Ministers Henare and Williams, we recommend a media release in the week beginning 22 March 2021.
5. To support any media and stakeholder engagement that you may wish to do, **Appendix B** attaches talking points to support the media release. Following the announcement, some stakeholders may wish to meet with you to discuss your intentions for the work. We will work with your office to support these meetings.

## Reconnecting with and informing key stakeholders of the decision to resume work

6. Following the media release, we will update the Department's webpage and communicate to key stakeholders via email. For example, we will ensure that we promptly inform the Charities Registration Board and the Sector Group (a key stakeholder group) that this work is resuming. If you do not wish to announce the resumption through a media release, we seek your agreement to refer to the resumption on the Department's webpage and contact key stakeholders in the week beginning 29 March 2021.
7. As noted late last year [briefing CVS202000231 refers], we propose not to restart the Core Reference Group. In informing them about the work resuming, we anticipate that some members may be disappointed at the decision. We will inform them that we intend to still seek the input of individual group members, as appropriate, as we target the expertise needed for particular topics. As discussed in the second section of this

briefing, stakeholder input will remain crucial to policy development and will inform the later design of the amendment bill.

### ***Keeping Ministerial colleagues informed***

8. We understand that SWC confirmed the scope and sequencing of this work on 17 March 2021. The Minister of Revenue is not a member of SWC but will likely have a significant interest due to the connection between charities' registration status and their tax treatment. We suggest you update the Minister of Revenue on your decision to resume work to modernise the Act. We have provided a draft letter for your consideration as **Appendix C**.
9. We also note that Ministerial consultation will be important ahead of progressing papers through the Cabinet process. We will work at the officials' level to keep other agencies informed as they brief their Ministers and we will support you in your engagement with your Ministerial colleagues.
10. The Ministers of Revenue and Finance will likely have a greater interest in the connection between their portfolios and the work on topics for the June 2021 Cabinet paper. The interests of the Ministers of Justice and Social Development and Employment, along with the Attorney General as the protector of charities, will likely lie in the work for the October 2021 Cabinet paper. We suggest engaging with these Ministers more closely as policy options are developed to ensure the options are fit for purpose.

### **Engaging with stakeholders during policy development**

#### ***Summary of earlier stakeholder engagement***

11. In February 2019, the Department released a public discussion document titled Modernising the Charities Act 2005. The discussion document was exploratory in nature. The discussion document asked about the issues faced in the sector, but did not propose options for consideration.
12. During the consultation period, the Department held 27 public community meetings around the country. These meetings included six hui, one Pacific fono and one meeting for representatives of ethnically diverse communities. More than 1,200 people attended these gatherings. The Department received 363 written submissions on the discussion document.
13. The Department also released an online meeting presentation video for members of the public that were unable to attend a community meeting. This video was viewed live by more than 350 attendees and has since been viewed more than 650 times on demand. The Department's webpage for this work received more than 7,000 views during the consultation period.

#### ***Engaging with targeted stakeholders is essential to developing and testing policy options***

14. Public consultation provided a wealth of information about the issues and opportunities that charities face, as well as the views of individuals, broader not-for-profits and others. This feedback forms a solid foundation to continue working from.
15. Our engagement will now target specific stakeholders as we develop policy options ahead of the first set of Cabinet decisions in June 2021. Stakeholder expertise is

essential when considering policy options on technical topics like charities' accumulation of funds and business activities.

16. Demonstrating that consultation has informed policy development is also an essential element to the assessment of the Regulatory Impact Statement that accompanies Cabinet papers. Consultation will continue to be important later in the process, when informing design of the amendment bill. The Legislation Design and Advisory Committee will assess and advise on the amendment bill against the contents of the Legislation Guidelines, which include effective consultation.
17. **Appendix D** outlines the key stakeholders we intend to consult with as representatives for the sector and subject matter experts. For example, the Sector Group, with its wide-ranging membership, will be a key stakeholder group for this work. We have also noted the key agencies we will be working with.
18. To ensure an appropriate cross-section and representation of the sector, we have selected stakeholders who:
  - a. have a high interest in a topic(s) that are in scope for this work; and/or
  - b. have high influence in topics(s) that are in scope for this work; and/or
  - c. demonstrated understanding and expertise of the topics in the 2019 public consultation; and/or
  - d. provide diversity of views (based on the public consultation); and/or
  - e. represent a diverse range of charities across different sectors, tiers and geographical spread.
19. This list of stakeholders is subject to stakeholders' availability and continued interest in engaging on the work.
20. We also note that targeted engagement means not being able to consult with everyone who may be interested in the work. We recognise the risk that some stakeholders may voice their concern about not having the opportunity to participate in this next phase. The talking points at **Appendix B** emphasise that at a minimum, Select Committee consideration of the amendment bill will provide an opportunity for all stakeholders, and the wider public, to participate.
21. We will also add to this key stakeholders list, as needed, as we move into the remaining topics for stage one policy development ahead of Cabinet decisions in October 2021. We will also update the wider charities sector at appropriate milestones.

## Recommendations

We recommend that you:

- a) **EITHER**
- i) **agree** to a media release announcing that work to modernise the Charities Act 2005 is resuming **Yes / No**
- AND**
- ii) **note** that the Department will communicate to key stakeholders and update the Department of Internal Affairs website about the resumption of work following the media release (**recommended option**)
- OR**
- iii) **agree** that if a decision is made not to issue a media release, the Department will begin to communicate to key stakeholders and update the Department of Internal Affairs website in the week beginning 29 March 2021; **Yes / No**
- b) **note** the draft talking points provided to support the media release;
- c) **notify** the Minister of Revenue of your decision to resume this work; **Yes / No**  
and
- d) **note** the importance of consultation to policy development, ahead of legislative drafting, and the key stakeholders the Department will engage with.



Sela Finau  
Policy Director

**Hon Priyanca Radhakrishnan**  
**Minister for the Community**  
**and Voluntary Sector**

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**Appendix A:** 9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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## Appendix B: Draft talking points to support media release

### Resuming work to modernise the Charities Act 2005

*I am keen to deliver real world benefits to help charities in New Zealand*

- In 2018 we began to look at how well the Act is working. We gained extensive information from public consultation in 2019 about the issues and opportunities that charities face.
- There are more than 27,000 charities registered under the Charities Act. Charities spend around \$18 billion annually on charitable purposes and manage \$65 billion in assets.
- Charities contribute hugely to the strength of communities across New Zealand – in sports, the arts, health, and other countless activities that make a real difference to people’s lives.
- Given the significance and contribution of the sector to communities, I am committed to achieving practical improvements and pass legislative amendments to modernise the Act this term.

9(2)(f)(iv)

- 9(2)(f)(iv)
- Stage one will lead to an amendment bill, and will look at:
  - the obligations that charities have under the Act, including the annual reporting requirements that small charities face, as well as the duties for officers of charities;
  - the regulator, in the sense of its powers, accountability and decision-making under its current structure (being the independent Charities Registration Board and Charities Services within the Department of Internal Affairs);
  - the accessibility of appeals within the current structure of appeal bodies; and
  - charities’ business activities and their accumulation of funds.

9(2)(f)(iv)

### Importance of modernising the Charities Act

*Modernising the Charities Act is important to maintain public trust and confidence in the charities sector*

- The community sector is diverse and complex and forms a vital part in our society.
- Modernising the Charities Act by delivering some practical improvements will achieve real world benefits for the community sector.
- Public consultation showed there are significant issues to address, like the compliance burden small charities face through reporting obligations.

- The changes can be made without a first principles review because key concepts underpinning the Act - particularly a registration, reporting and monitoring system for charities - remain sound. <sup>9(2)(f)(iv)</sup>

### **Targeted consultation approach taken for the upcoming policy development phase**

*I intend to take a targeted approach to consultation to engage with the key stakeholders most likely to be affected*

- Public consultation from 2019 provided a wealth of information about the issues and opportunities that charities face, as well as the views of individuals, broader not-for-profits and others.
- This forms a solid foundation to work from, and there is now an opportunity to maintain engagement with a more targeted scope of stakeholders as we develop policy options for stage one of the work.
- At a minimum, Select Committee consideration of the amendment bill will provide an opportunity for all stakeholders, and the wider public, to participate again.

### **Topics for policy development in stage one**

*Topics that stage one policy development will explore are:*

#### *1. reporting requirements for small charities*

- This issue will consider the appropriateness of the compliance burden on small charities, and its balance with the need for transparency in the use of charitable funds.

#### *2. charities' accumulation of funds and business activities*

- Understanding the risk to charitable funds is important, where charities without explanation accumulate significant funds over time, distributing little or nothing to charitable purposes.
- It is also important to acknowledge that accumulating funds is often necessary for a charity to save for a new community facility or to grow assets to benefit current and future generations (including iwi and hapu charities that hold settlement assets).
- Business income is important to the financial sustainability of many charities.
- However, an issue that may need further consideration is, for example, the risk that charitable funds are not used for charitable purposes (e.g. a charity putting money into a failing business).

#### *3. duties of officers*

- Charities register under the Charities Act, but often incorporate and have legal obligations under other legislation, like the Incorporated Societies Act.
- Consideration is required, as officers of charities may have very similar duties under more than one piece of legislation.

#### *4. regulator's powers, accountability and decision-making (under its current structure)*

- Independence of the regulator's decision-making was an important issue for submitters during public consultation in 2019.



- Options to strengthen the perceived independence and performance of the current regulator will be considered, such as whether the current number of members for the Charities Registration Board is appropriate.

5. *accessibility of appeals (within current structures)*

- Currently charities can only appeal decisions taken by the Charities Registration Board to the High Court. The time and significant cost involved can be a barrier to appeals.
- Intermediate options for a more accessible appeals process will be considered.

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## Appendix C: Draft letter to the Minister of Revenue

[date] March 2021

Hon David Parker  
Minister of Revenue

### Update on resuming work to modernise the Charities Act

Tēnā koe David

I am writing to update you on work to modernise the Charities Act 2005 that commenced last term. I am resuming this work as a top priority in my portfolio. I also updated colleagues on the scope and sequencing last week at Cabinet Social Wellbeing Committee.

9(2)(f)(iv) [REDACTED] The first stage will lead to enactment of an amendment bill this term covering many key areas that were publicly consulted on last term. The first stage includes several issues you may have an interest in, such as:

- reporting requirements for small charities;
- charities' accumulation of funds; and
- charities' business activities.

I intend to seek Cabinet approval on policy decisions for these issues in June 2021. I will share my early views and consult with you as the policy proposals develop. As part of this work, I will also be contacting you later in the year about appeals issues for charities, in your role as Attorney-General. If you have any questions in the meantime, please get in touch.

Nāku iti noa, nā

Hon Priyanca Radhakrishnan  
Minister for the Community and Voluntary Sector

## Appendix D: Key stakeholders for policy development

Representation	Organisation / Individual	Description
Charities Sector	Sector Group	<p>The Charities Sector Group was started to provide an opportunity for members of the charities sector to interact directly with Charities Services. They are also a key group for this work to modernise the Act. Some, if not all, will have views and interest in the different topics that will be explored. Core membership of the group includes representatives from the below organisations:</p> <ul style="list-style-type: none"> <li>• Charity Law Association of Australia and New Zealand</li> <li>• Chartered Accountants Australia and New Zealand</li> <li>• Hui E! Community Aotearoa</li> <li>• NZ Navigator Trust</li> <li>• Philanthropy New Zealand</li> <li>• Volunteering New Zealand</li> </ul> <p>We anticipate that, subject to time available, the umbrella organisations will likely seek input from their members to contribute to the work.</p>
	Sector Group member: Charities Law Association of Australia and NZ (CLAANZ)	Sue Barker will likely represent CLAANZ on the Sector Group. Sue was on the Core Reference Group, and she is the director of Sue Barker Charities Law, a boutique law firm based in Wellington, specialising in charities law and public tax law. Sue is currently on a sabbatical as the 2019 New Zealand Law Foundation International Research Fellow, undertaking research into the question "What does a world-leading framework of charities law look like?", with a report due by September 2021.
	Sector Group member: Chartered Accountants Australia and New Zealand (CAANZ)	CAANZ promotes the 'Chartered Accountants' designation, and high ethical standards. They engage with government on behalf of their members, and have an interest in a range of issues.
	Sector Group member: Hui! E	Hui E! is a peak body for the tangata whenua, community and voluntary sector in Aotearoa New Zealand.
	Sector Group member: Philanthropy NZ	Philanthropy NZ is the peak body representing and supporting philanthropy and grant making in Aotearoa New Zealand. Members include trusts, foundations, community groups, family, individuals, investors, local government, iwi and not-for-profit organisations.
	Sector Group member: New Zealand Navigator Trust	The NZ Navigator Trust is creating a growing portfolio of digital spaces to equip a thriving charitable and community sector in Aotearoa New Zealand. Their focus is on supporting the efforts of others and they provide digital tools and resources to enhance the work done by the community organisations.
	Sector Group member: Philanthropy NZ	Philanthropy NZ is the peak body representing and supporting philanthropy and grant making in Aotearoa New Zealand. Members include trusts, foundations, community groups, family, individuals, investors, local government, iwi and not-for-profit organisations.
	Sector Group member: Volunteering New Zealand	Volunteering New Zealand is an association of volunteer centres, and national and regional organisations with a commitment to volunteering in Aotearoa New Zealand.
	Tier 1 and 2 charities and representative bodies	Some tier 1 and 2 charities will have an interest in the business and accumulation policy proposals. Examples of tier 1 and 2 charities include: SPCA NZ, Medical Assurance Services, Plunket, St George's Hospital, NZ College of Midwives and representative bodies like the InterChurch Bureau.

	Private foundations (a subset of Tier 1 and 2 charities)	Accumulation can be important to private foundations, who may have an interest in both the business and accumulation policy proposals. We received submissions from Tier 1 and 2 private foundations on these issues in public consultation.
<b>Small Charities</b>	Specific individuals involved in small charities (to be confirmed)	We will look to engage with individuals involved in small charities. We will identify these individuals from public submissions in 2019, or from our work to date. For example, we will likely approach Charmaine Brown, who was on the Core Reference Group. Charmaine is a Chartered Accountant with significant experience in the not for profit sector through her involvement with several small charities and marae.
<b>Regulator</b>	Charities Services and Charities Registration Board	Charities Services and the Registration Board together comprise the regulator. They are well placed to share their insights on current workings.
<b>Government</b>	Inland Revenue (IR)	Charities' registration status connects to their tax treatment. The Government Response to the Tax Working Group's final report was that business and accumulation issues would be considered as part of IR's Tax Policy Work Programme and through work to modernise the Charities Act. As such, IR have a high interest in this work.
	The External Reporting Board (XRB)	XRB set the reporting standards for not-for-profits and will want to input on recommendations relating to reporting/transparency of funds.
	Ministry of Business, Innovation and Employment (MBIE)	MBIE will be advising on the recently introduced Incorporated Societies Bill. The Bill affects the significant proportion of charities that are also incorporated societies.
	Te Puni Kokiri (TPK) and Te Arawhiti	Te Puni Kokiri will be interested on the impact of any proposal on Māori charities/iwi/post settlement governance groups. They may be able to provide advice on applying a te ao Māori lens to the business and accumulation issues. We will also seek advice from Te Arawhiti on approaches to engaging with Māori and iwi for this project.
	Ministry of Justice (MoJ) and Crown Law Office	The Ministry of Justice and Crown Law will have a key interest in any policy proposals regarding the appeals process.
<b>Iwi and Māori</b>	Waikato Tainui Raupatu Lands Trust and Group and Ngāi Tahu Charitable Group	Iwi, particularly mature post settlement groups such as Waikato Tainui and Ngāi Tahu, have established charitable arms and will have significant interests in the business and accumulation topics. This is because these groups tend to maintain substantial levels of assets and surplus funds and operate several businesses. This is to grow settlement funding and provide benefits for future generations. Donna Flavell was on the Core Reference Group and is Chief Executive of Te Whakakitenga o Waikato Incorporated.
	Te Hunga Rōia Māori o Aotearoa – The Māori Law society	Te Hunga Rōia Māori o Aotearoa provides te iwi Māori representation in the legal profession. The Society includes a significant membership of legal practitioners, judges, parliamentarians, legal academics, policy analysts, researchers and Māori law students. The Society will provide valuable Māori perspective on our proposals.
<b>Academics</b>	Ian Murray	Ian Murray is an academic/professor based in Western Australia who has published research on charity law and accumulation. His studies include consideration of intergenerational distribution of charitable funds and other related issues.
	Michael Gousmett	Michael Gousmett is an independent researcher who has written extensively about charitable business. He was featured in the New Zealand Law Journal in March 2000, where he wrote about the transparency of charitable business and provided examples.

<b>Individual submitters</b>	Individual submitters	We may contact submitters from public consultation in 2019 that demonstrated high interest and consideration of the impacts of the issues, or unique views or expertise that are unlikely to be represented through our other engagement.
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## Excerpt from the Community and Voluntary Sector Status Report

Week Ending 31 March 2021

### Modernising the Charities Act – project updates

#### Upcoming weeks

Item	Description	Date expected
Departmental action	Announcement on resumption of the work to modernise the Charities Act (TBC) and communicating with key stakeholders	Early April TBC

#### Previous weeks

Item	Description	Date delivered
Briefing	Objectives for modernising the Charities Act, and early analysis of reporting requirements for small charities	18 March 2021
Briefing	Modernising the Charities Act: communications and stakeholder engagement	19 March 2021
Briefing	Modernising the Charities Act: introduction to business and accumulation topic	31 March 2021

#### Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Briefing: Modernising the Charities Act – accumulation of funds by large charities	31 March 2021	For noting	Sela Finau 9(2)(a)	Marilyn Little

## Excerpt from the Community and Voluntary Sector Status Report

### Week Ending 15 April 2021

#### Modernising the Charities Act – project updates

##### Upcoming weeks

Item	Description	Date expected
Briefing	Charities with business activities	15 April 2021
Briefing	Options to test with stakeholders: reporting requirements, accumulation and business	Early May 2021
Departmental engagement	Charities Sector Group meeting (organised by Charities Services)	Early May 2021

##### Previous weeks – completed

Item	Description	Date delivered
Briefing	Modernising the Charities Act: introduction to accumulation topic	31 March 2021
Departmental Action	Announcement on resumption of the work to modernise the Charities Act and communicating with key stakeholders	12 April 2021

#### Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Information briefing: charities with business activities	15 April 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Proactive release of paper supporting oral item – Modernising the Charities Act 2005	19 April 2021	For decision	Jayne Beggs 9(2)(a)	Marilyn Little



## Excerpt from the Community and Voluntary Sector Status Report

Week Ending 29 April 2021

### Modernising the Charities Act – project updates

#### Upcoming weeks

Item	Description	Date expected
Departmental engagement	Meeting with External Reporting Board	Week starting 27 April 2021
Briefing	Options to test with stakeholders - reporting requirements for small charities	6 May 2021
Briefing	Options to test with stakeholders - business activities and accumulation of funds	6 May 2021
Departmental engagement	Charities Registration Board meeting (organised by Charities Services)	7 May 2021
Briefing	Introduction to the regulator and appeals	Mid May 2021
Briefing	Introduction to obligations of charities, including officers' duties	Mid May 2021
Departmental engagement	Charities Sector Group meeting (organised by Charities Services)	Mid May 2021
Departmental engagement	Core Reference Group for Modernising the Charities Act	19 May 2021

#### Previous weeks – completed

Item	Description	Date delivered
Briefing	Charities with business activities	15 April 2021
Departmental engagement	Meetings with Inland Revenue	20 & 22 April 2021

## Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Modernising the Charities Act: options to test with stakeholders - reporting requirements for small charities	6 May 2021	For consideration	Jayne Beggs 9(2)(a)	Marilyn Little
Modernising the Charities Act: options to test with stakeholders - business activities and accumulation of funds	6 May 2021	For consideration	Jayne Beggs 9(2)(a)	Marilyn Little
Modernising the Charities Act: introduction to the regulator and to appeals	Mid May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little
Modernising the Charities Act: introduction to obligations of charities, including officers' duties	Mid May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little

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## Excerpt from the Community and Voluntary Sector Status Report

### Week Ending 13 May 2021

#### Modernising the Charities Act – project updates

##### Upcoming weeks

Item	Description	Date expected
Departmental engagement	Core Reference Group for Modernising the Charities Act	19 May 2021
Briefing	Introduction to obligations of charities, including officers' duties	20 May 2021

##### Previous weeks – completed

Item	Description	Date delivered
Departmental engagement	Meeting with External Reporting Board	30 April 2021
Briefing	Options to test with stakeholders - reporting requirements for small charities	6 May 2021
Briefing	Options to test with stakeholders - business activities and accumulation of funds	6 May 2021
Departmental engagement	Charities Registration Board meeting (organised by Charities Services)	7 May 2021
Departmental engagement	Meeting with MBIE on the Incorporated Societies Bill – connections to Charities work	11 May 2021
Departmental engagement	Charities Sector Group meeting (organised by Charities Services) – we shared our intention to engage with them on options for the reporting requirements and business and accumulation matters. We noted our upcoming deliverables and timeframes which they will likely share with their members.	11 May 2021
Briefing	Introduction to the Regulator	11 May 2021
Briefing	Introduction to appeals	13 May 2021

## Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Briefing: Modernising the Charities Act – Introduction to the regulator	11 May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Modernising the Charities Act – Introduction to appeals	13 May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Modernising the Charities Act – Introduction to obligations of charities, including officers' duties	20 May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little

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## Excerpt from the Community and Voluntary Sector Status Report

Week Ending 27 May 2021

### Updates

Priority	Update
<p><b>Modernising the Charities Act: targeted engagement with Core Reference Group</b></p> <p><b>Responsible DCE:</b> Marilyn Little</p> <p><b>Contact:</b> Jayne Beggs 9(2)(a)</p>	<p><i>Recent activities</i></p> <p>On 19 May 2021, we met with the Core Reference Group (CRG) as part of our targeted engagement on the first tranche of topics. The CRG was established to assist work to modernise the Charities Act. The meeting included CRG members Charmaine Brown, Sue Barker, Sai Lealea, and Dave Henderson.</p> <p>We sought feedback from the CRG on draft options for reporting requirements for small charities, charities accumulating funds, and registration requirements for charitable businesses. We also sought their views on issues relating to officers of charities, the regulator and the appeals framework.</p> <p>The CRG is pleased to see work resume and to be involved in the policy development process.</p> <p>Their feedback included adjusting the proposed threshold for the option exempting the smallest charities from reporting requirements, considering more practical options like providing small charities with accounting software, and that focusing on accumulation by fundraising charities rather than all charities may not be practical.</p> <p><i>Next steps</i></p> <p>We will include all feedback and views gathered from the targeted stakeholders into our analysis to provide advice to you on preferred options in mid-June.</p>

### Modernising the Charities Act – project updates

#### Upcoming weeks

Item	Description	Date expected
Departmental engagement	Discussion with officials on engagement with stakeholders	31 May 2021
Ministerial engagement	Meeting with the Minister of Revenue	2 June 2021

Previous weeks – completed

Item	Description	Date delivered
Departmental engagement	Meeting with the Core Reference Group for Modernising the Charities Act	19 May 2021
Briefing	Introduction to obligations of charities, including officers' duties	20 May 2021
Departmental engagement	Presentation to the Interchurch Bureau	26 May 2021
Briefing	Aide Memoire to support your meeting with the Minister of Revenue	27 May 2021

Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Aide Memoire: Modernising the Charities Act – Meeting with the Minister of Revenue	27 May 2021	For noting	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Options to test with stakeholders – the regulator	17 June 2021	For agreement	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Options to test with stakeholders - appeals	17 June 2021	For agreement	Jayne Beggs 9(2)(a)	Marilyn Little



# Community and Voluntary Sector aide memoire

Hon Priyanca Radhakrishnan  
Minister for the Community and Voluntary Sector

Title: **Modernising the Charities Act: Meeting with Minister of Revenue**

Date: 27 May 2021

## Key issues

You are meeting with the Minister of Revenue, Hon David Parker, on 2 June 2021 to discuss the modernisation of the Charities Act 2005.

This aide memoire provides you with background information and suggested talking points to support you at your meeting. Officials will also meet with you on 1 June to help you prepare for the meeting.

## Action sought

Read this aide memoire ahead of the meeting.

## Timeframe

By 1 June 2021

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Sela Finau	Policy Director	9(2)(a)	✓
Jayne Beggs	Policy Manager	9(2)(a)	
Return electronic document to:	9(2)(a)		
Cohesion document reference	6EYAVYC5ZNWP-127011824-458		
Ministerial database reference	CVS202100158		

Sela Finau  
Policy Director



## Purpose

1. This aide memoire provides you with background information and talking points for your meeting with the Minister of Revenue, Hon David Parker, on 2 June 2021.

## Background

2. One of the ways Government supports charities is through providing favourable tax treatment. This includes income tax deductions and exemptions, tax concessions for donations, GST concessions, and fringe benefit tax concessions for certain employees.
3. You recently wrote to Hon Parker informing him that work had resumed on modernising the Charities Act 2005 (the Act) as a top priority in your portfolio. You identified topics that he may have interest in because of the relationship with the tax regime. These are:
  - 3.1 Charities with business activities;
  - 3.2 Charities accumulating funds; and
  - 3.3 Reporting requirements for small charities.
4. The purpose of the meeting is to tell him the matters that are in scope of these topics, and how they are progressing. You will be supported at the meeting by Department officials Sela Finau (Policy Director) and Jayne Beggs (Policy Manager).

5. 9(2)(f)(iv)

## Topics for discussion

### Charities with business activities

6. Business activities are a well-established way for charities to raise funds. For example, universities requiring tuition fees from students to advance education, or a hospice using funds from an opportunity shop to provide palliative care to terminally ill patients. For iwi charities, like Ngāi Tahu and Waikato Tainui, business operations are considered critical for generating a sustainable financial return to support the long-term economic and social development of their iwi members. Around 20 per cent of registered charities may have business activities.<sup>1</sup>
7. While we are not considering fundamental issues like whether charities should be able to engage in business activities, we have identified that the regulator's approach to determining if a charitable business meets registration requirements is not transparent enough. There is also a perception that the approach lacks legitimacy. We are currently consulting with targeted stakeholders on operational changes to address this.
8. We are also exploring possible issues that may warrant amendments to the Act including officers of charities using business activities for private profit, poor business decisions putting charitable funds at risk, and whether consolidated financial reporting obscures these problems.

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<sup>1</sup> Based on filed self-reported annual returns for 1 July 2019 – 30 June 2020. Includes charities that have reported at least \$100,000 for service trading income associated with trading operations, cost of trading operations, and/or other revenue from exchange transactions. Refer CVS202100103 for more information.

9(2)(f)(iv)

9.

9(2)(f)(iv)

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9(2)(f)(iv)

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9(2)(f)(iv)

### Charities accumulating funds

12. The topic on charities accumulating funds stems from the Government's response to the Tax Working Group recommendations in 2019. The Tax Working Group took the view that to qualify for tax exemption, accumulated funds should be used for charitable purposes. However, the Group also recognised that charities have many valid reasons to accumulate funds.
13. We recently advised you that we consider there is a problem with a lack of transparency around if, when and how fundraising charities will distribute accumulated funds to charitable purpose. Fundraising charities are different to other charities in that they only further charitable purpose once they distribute funds. There is evidence of considerable variance in funding distribution by some fundraising charities, but no clarity on why this is the case.
14. We are currently consulting with targeted stakeholders on what they think about this problem and a range of draft options to address it. These options are:
  - 14.1 no change;
  - 14.2 guidance from Charities Services on furthering charitable purpose;
  - 14.3 reporting more on accumulation in the annual return;
  - 14.4 requiring a distribution plan; and
  - 14.5 setting minimum distribution requirements.

9(2)(f)(iv)

15.

9(2)(f)(iv)

16. 9(2)(f)(iv)



**The appeals topic may also be of interest**

17. You noted in your letter to Hon Parker that you would also be in touch about the appeals topic due to his role as Attorney-General. He may wish to discuss where this work is heading.
18. We recently provided background information to you on the Act's appeals framework, noting that we are looking at:
- 18.1 what decisions are available for appeal under the Act;
  - 18.2 what type of appeal may be appropriate; and
  - 18.3 what body should hear the appeals.
19. We got feedback from the sector on issues relating to the appeals framework as part of the 2019 consultation. Feedback was about the inability to appeal decisions made by Charities Services, the inability to provide both new evidence and oral evidence at appeals hearings, and the inaccessibility of the High Court for most charities, given the significant costs involved. We will brief on you on problem definitions and options to test with targeted stakeholders on these matters in mid-June.

**Next steps**

20. Continued coordination and engagement with the Minister of Revenue will be important as you progress this work, particularly if tax policy matters affecting charities are also progressed under the Revenue portfolio. You may wish to meet with Hon Parker again, during consultation on the draft Cabinet paper, to discuss his views on the proposals.

**Talking points**

21. Suggested talking points for the meeting are provided in **Appendix A**.

## **Appendix A: Suggested talking points**

### ***Overview of work to modernise the Charities Act***

- I am keen to ensure progress is made to modernise the Charities Act and intend to deliver an amendment bill this term.
- I have directed officials to address issues that will have practical impacts on the day-to-day running of charities, rather than looking at more fundamental matters.
- I want to support charities, so they can get on with their good work, but I also want to ensure that they are transparent to the public and other interested parties.
- The topics of focus are reporting requirements for small charities, charities accumulating funds, charities engaging in business activities, obligations of charities, the regulator, and the appeals mechanism.
- I recognise the strong connection between the Charities Act and the tax system and am keen to discuss how things are tracking on areas of mutual interest.

### ***Charitable business***

- Business activities are a well-established way for charities to raise funds – I am not seeking advice on whether charities should be able to engage in business activities.
- Looking at practical matters, my officials have advised me that there is a lack of transparency around what the regulator considers when registering charitable businesses. Officials have just finished consulting with targeted stakeholders on how that could be addressed.
- Officials have also advised me there may be some issues with charities using business for private profit or making business decisions that risk charitable funds. I note the Tax Working Group considered this in the context of private foundations.
- I will keep you up to date on how work on private benefit and conflicts of interest in charities progresses and will be keen to hear your views.

### ***Charities accumulating funds***

- Accumulating funds is an important way for charities to do good work. However, for some charities, the need to accumulate is less clear.
- My officials have advised me that it is not clear that fundraising charities, like charitable businesses and private foundations, will distribute their accumulated funds.
- Officials have just finished consulting with targeted stakeholders on options to improve transparency of fundraising charities.
- There are a range of draft options on the table which I have not yet made decisions on.
- The options are status quo, guidance from Charities Services on furthering charitable purpose, more reporting on accumulation, requiring a distribution plan, or setting minimum distribution requirements.
- I am awaiting advice from officials on a preferred option following targeted stakeholder engagement. I will let you know where I land on that and seek your views.

**Next steps**

- Officials will advise me on preferred options for the business and accumulation topics now that targeted engagement has been completed.
- My officials will continue to work closely with your officials, and I will keep you up to date on how work is progressing ahead of taking proposals to Cabinet in September.
- You will have further opportunity to input when I consult on the Cabinet paper. I would be keen to talk with you again in September to get your views on the proposals.
- I note you may consider changes to tax policy settings that could impact charities - it will be important for us to remain coordinated.

**Back pocket talking points on the appeals work if raised by Hon Parker**

- Officials have advised me there may be issues with:
  - only being able to appeals decisions of the Charities Registration Board (and not Charities Services);
  - that new evidence and oral evidence cannot be heard at appeals hearings; and
  - that appealing to the High Court is inaccessible for most charities given the costs involved.
- I am awaiting further advice from officials and look forward to getting your input on this.

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## Excerpt from the Community and Voluntary Sector Status Report

Week Ending 10 June 2021

### Updates

Priority	Update
<p><b>Modernising the Charities Act: stakeholder feedback on fundraising charities accumulating funds</b></p> <p><b>Responsible DCE: Marilyn Little</b></p> <p><b>Contact: Jayne Beggs</b> 9(2)(a)</p>	<p><i>Recent activities</i></p> <p>In the 27 May 2021 status report, we updated you on our meeting with the Core Reference Group about draft policy options for reporting requirements for small charities, charities accumulating funds, and registration requirements for charitable businesses.</p> <p>We noted their view that focusing on accumulation of funds by “fundraising charities” would not be practical. On 4 June 2021, at the officials meeting you asked for clarity on this point considering your discussion about this work with the Minister of Revenue, Hon David Parker, on 2 June 2021.</p> <p>Our rationale for focusing on “fundraising charities” (charities that only provide grants, loans or other funds to charities) is that unlike other charities, they do not further their charitable purpose until they distribute their accumulated funds. 9(2)(f)(iv)</p> <p>Members of the Core Reference Group and targeted stakeholders consider that targeting “fundraising charities” is not a good approach. Their view is that funding accumulation by these charities can further charitable purpose, and that the term “fundraising” has too many other meanings in the charitable sector. Some stakeholders commented that we should focus on all types of large charities, that pose a higher risk to charitable funds.</p> <p><i>Next steps</i></p> <p>We are considering this feedback, along with the concerns raised by the Minister of Revenue and his officials, in undertaking further analysis on the issue of charities accumulating funds.</p> <p>We will provide advice to you on a revised problem definition and preferred option this month.</p>

### Modernising the Charities Act – project updates

#### Upcoming weeks

Item	Description	Date expected
Briefing	Options to test with stakeholders – the role of officers	17 June 2021
Briefing	Options to test with stakeholders – the regulator	17 June 2021

Item	Description	Date expected
Briefing	Options to test with stakeholders – appeals framework	17 June 2021
Briefing	Advice on preferred option for charities accumulating funds following targeted stakeholder engagement	22 June 2021

Previous weeks – completed

Item	Description	Date delivered
Briefing	Aide Memoire to support your meeting with the Minister of Revenue	27 May 2021
Departmental engagement	Discussion with officials on engagement with stakeholders	31 May 2021
Ministerial engagement	Meeting with the Minister of Revenue	2 June 2021

Briefings and Cabinet Papers

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
Briefing: Modernising the Charities Act options to test with stakeholders – the regulator	17 June 2021	For agreement	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Modernising the Charities Act options to test with stakeholders – appeals	17 June 2021	For agreement	Jayne Beggs 9(2)(a)	Marilyn Little
Briefing: Modernising the Charities Act options to test with stakeholders – the role of officers	17 June 2021	For agreement	Jayne Beggs 9(2)(a)	Marilyn Little

Title	Date to Minister	Action for Minister	Key contact	Responsible DCE
<b>Briefing:</b> <b>Modernising the Charities Act – Advice on preferred option for charities accumulating funds following targeted stakeholder engagement</b>	<b>22 June 2021</b>	<b>For agreement</b>	<b>Jayne Beggs</b> 9(2)(a)	<b>Marilyn Little</b>
<b>Briefing:</b> <b>Modernising the Charities Act – Advice on preferred option for reporting requirements for small charities</b>	<b>22 June 2021</b>	<b>For agreement</b>	<b>Jayne Beggs</b> 9(2)(a)	<b>Marilyn Little</b>
<b>Briefing:</b> <b>Community and Voluntary Sector Work Programme 2021-2023 Progress Tracker June 2021</b>	<b>24 June 2021</b>	<b>For noting</b>	<b>Leora Hirsh</b> 9(2)(a)	<b>Maria Robertson</b>





# Community and Voluntary Sector briefing

Hon Priyanca Radhakrishnan  
Minister for the Community and Voluntary Sector

**Title:** Modernising the Charities Act: Communications Plan to announce  
Cabinet decisions

**Date:** 7 April 2022

## Key issues

This briefing provides you with a Communications Plan to support an announcement on Cabinet decisions for the work to modernise the Charities Act 2005 (Charities Act). The Communications Plan contains six sections including a draft press release, talking points, questions and answers (Q&A), issues that maybe raised by stakeholders along with mitigations, a list of stakeholders involved in the work, and the list of policy decisions for your reference. The talking points and Q&A are designed to support any communications following the press release.

Following your announcement, the Department of Internal Affairs (the Department) will proactively release the Cabinet paper and associated documents on our website.

## Action sought

Agree to announce the Cabinet decisions on the work to modernise the Charities Act following Budget Day 2022.

## Timeframe

By 14 April 2022

## Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Jayne Beggs	Policy Manager	9(2)(a)	✓
Sela Finau	Policy Director	9(2)(a)	
Return electronic document to:	9(2)(a)		
Cohesion document reference	6EYAVYCSZNWP-127011824-1099		
Ministerial database reference	CVS202200063		

## Purpose

1. This briefing provides you with a Communications Plan (refer **Appendix A**) to support you to announce Cabinet decisions on the work to modernise the Charities Act 2005. The Plan contains the following elements:
  - 1.1 a draft press release;
  - 1.2 talking points;
  - 1.3 questions and answers;
  - 1.4 issues that may be raised by stakeholders and suggested mitigations;
  - 1.5 a list of stakeholders involved in the work; and
  - 1.6 the list of policy decisions to modernise the Charities Act.

## Background

2. Cabinet agreed to the policy decisions for the work to modernise the Charities Act on 14 February 2022 [CAB-22-MIN-0021 refers]. The Department have since briefed you on potential announcement approaches in February 2022 (CVS02200019 refers) and about proactive release of the Cabinet paper and associated documents in March 2022 (CVS202200040 refers). The Department is now providing you with a Communications Plan that reflects our likely success in the Budget 2022 process.
3. The Department considers that the work to modernise the Charities Act is of greatest interest to the charitable and not-for-profit sectors. Therefore, we are providing a Communications Plan that will suit these stakeholders. As part of the plan, we have liaised with relevant agencies (Inland Revenue and Ministry of Business, Innovation and Employment) to ensure consistency of communications. Some potential Q&A related to those agencies' work is provided in the attached plan.

## Communications Plan

4. The Department recommends that you make your announcement via press release following Budget Day (19 May 2022). We advise liaising with the Minister of Finance and the Prime Minister's Office to confirm timing. When your press release goes live, we will update the Department's website with information about the policy decisions along with the proactively-released Cabinet paper and associated documents.
5. The talking points and Q&A within the plan are intended to support additional communications on the announcement. The list of policy decisions is also attached for your reference when communicating the policy decisions. The Communications and Policy teams at the Department will also support your office with media inquiries as needed. The Department will share your announcement through our social media channels and we suggest that you use your social media channels to enhance the distribution of your message.

### **Potential stakeholder risks and mitigations**

6. The objective of the work to modernise the Charities Act was to 'encourage and support charities to continue their trusted and vital contribution to community wellbeing, while ensuring that contribution is sufficiently transparent to interested parties and the public'. The policy decisions provide a balanced package that meet this objective, with a focus on practical improvements. However, the balanced approach means there will be people who may disagree with some of the decisions.
7. The potential issues that people may raise along with suggested mitigations are detailed in Section 4 of the Plan. In Section 5, we have also provided you with a comprehensive list of stakeholders that were involved in the engagement process and are likely to be interested in the announcements. There is a risk some people will feel their views have not been heard, or that they did not have the opportunity to contribute. This can be mitigated by emphasising the Select Committee stage is another opportunity for feedback.
8. To avoid the potential for incorrect reporting of this work among the charitable sector, we can also provide an update through the Charities Services newsletter to ensure accurate information reaches these stakeholders. The newsletter is sent to all registered charities and any additional interested parties who have signed up to receive the information.

### **Next steps**

9. Subject to your availability and agreement from your colleagues, we suggest an announcement on the work to modernise the Charities Act is made in late May 2022 following Budget 2022 announcements.

## Recommendations

10. We recommend that you:

- a) **Agree** to announce the Cabinet decisions on the work to modernise the Charities Act following Budget Day 2022; and **Yes/No**
- b) **Note** the Department will proactively release the Cabinet paper and associated documents following the announcement and update our website with supporting information.



Sela Finau  
Policy Director

Hon Priyanca Radhakrishnan  
Minister for the Community  
and Voluntary Sector

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## Appendix A: Communications Plan

### Announcing decisions on modernising the Charities Act

#### Section 1: Draft press release

##### Charities and communities to benefit from changes to the Charities Act

Making it easier to help the community is the focus of changes being made to the Charities Act, says Community and Voluntary Sector Minister Priyanca Radhakrishnan.

“Charities are a valued part of our society, and the past two years have crystallised why we need to take care of them in the same way they take care of our communities,” says Minister Radhakrishnan.

The newly announced changes will include introducing increased transparency on accumulated funds, reduced reporting requirements for very small charities, clarifying the role of officers of charities, and a more accessible judicial appeals body.

“We are working to help support charities to thrive while also ensuring trust and confidence by the public in our charitable sector.”

For very small charities, the benefit will come from an easing of financial reporting requirements to the regulator.

“I want to lighten the burden on our smallest charities, who are often the ones volunteering to provide important services in our communities.

“This will lessen their operating costs and allow volunteers to spend more time doing the mahi they love. It is estimated that 12 percent of all registered charities will benefit from this proposal.”

Minister Radhakrishnan is also proposing to improve transparency and fairness by requiring larger charities to be more transparent to the public about why they have accumulated funds such as cash, assets or other resources.

“It is well established that a number of New Zealand’s largest charities have significant accumulated funds they use to achieve their charitable purpose. There is an interest in these funds and what they are used for, so we want to make this information more readily available.

“Transparency builds trust, and the public need to be able to trust charities to be responsible with their tax-free income.”

These increased transparency efforts will also extend to the responsibilities of the regulator.

The Charities Registration Board will be required to publish all decline and deregistration decisions and provide a clear process for formal objections.

Charities will be able to appeal a wider range of decisions and where appeals are made to significant decisions, they will now be made to an expanded Taxation Review Authority instead of the High Court, which was legally complex, time-consuming, and expensive, disadvantaging smaller charities.

The new appeals process will be less formal, allow charities to self-represent, and have more relaxed rules of evidence. The timeframe for lodging an appeal will be extended from 20 days to two months.

“I want to make it easier and less costly for charities to appeal decisions. It is important that our system doesn’t just work for those who have the resources to navigate it. It must provide the same service and the same access for everyone,” says Minister Radhakrishnan.

To enable this, \$2.6 million is being made available as part of Budget 2022.

These changes are expected to come into effect in 2023 following amendments to the Charities Act. The public will have an opportunity to provide feedback through the Select Committee process.

ENDS

### **Background**

- The Charities Act provides a registration, reporting and monitoring system for entities that carry out charitable purposes, and therefore has a clear public benefit.
- The system helps approximately 28,000 registered charities to retain the public’s trust and confidence that charitable funds are being managed appropriately. While registering for charitable status is voluntary, it brings benefits, including eligibility for tax exemptions and funding opportunities.
- The charitable sector is diverse, ranging from large iwi organisations, churches, and education providers to local providers of social services, toy libraries, and sports clubs.
- Charities contribute greatly to New Zealand society, spending over \$19 billion over the past financial year.
- They benefit a range of communities by providing services that directly respond to community need. This was highlighted during the COVID-19 pandemic when charities provided a wide variety of support such as food parcels and emergency accommodation.
- Since the Charities Act was introduced in 2005, the sector’s operating environment has changed. Crown entity reforms resulted in the disestablishment of the Charities Commission in 2012. The Commission’s functions were transferred to the Charities Registration Board and the Chief Executive of Te Tari Taiwhenua Department of Internal Affairs.
- Changes to reporting requirements in 2015 required charities to report to financial reporting standards specified by the External Reporting Board (a Crown entity) for greater transparency and consistency.
- Changes to reporting requirements for very small charities will complement the work being done by the External Reporting Board to reduce and simplify the existing Tier 4 standard for small charities.

## Section 2: Talking points

### ***Cabinet has approved policy proposals for work to modernise the Charities Act***

- In 2018, Cabinet agreed to a review of the Charities Act to with the aim of modernising the Act.
- Public consultation occurred in 2019 on a range of issues, however, work was put on hold in 2019 due to COVID-19 and resumed in late 2020.
- Policy development on a range of topics was completed at the end of 2021. In February 2022, Cabinet approved the policy proposals.
- I expect to introduce the Charities Amendment Bill to Parliament this year with the aim of passing the Bill by 2023. The public will have an opportunity to provide feedback through the Select Committee process.

### ***The charitable sector is diverse and makes a great contribution to New Zealand society***

- The sector is diverse and includes sports clubs, churches, providers of education, and social services. There are about 28,000 registered charities in New Zealand.
- Over half of charities in New Zealand are small and often volunteer run.
- Charities benefit communities by providing services that respond to community need. This was demonstrated during the COVID-19 pandemic when charities provided support such as food parcels and emergency accommodation.
- Charities spent over \$19 billion over the last financial year.

### ***Significant changes since the Charities Act's commencement in 2005 prompted the Modernising the Charities Act work programme***

- The Charities Commission was disestablished in 2012 and its functions were transferred to the Charities Registration Board and the Chief Executive of the Department of Internal Affairs, delegated to Charities Services (the charities regulator).
- From 2015, charities were required to report to financial reporting standards specified by the External Reporting Board.

### ***The objective of the work programme is to deliver real world benefits to charities***

- The aim of the Modernising the Charities Act work is to support charities to continue contributing to community wellbeing while ensuring public transparency.
- The Government considers the fundamentals of the Charities Act (which is a registration, reporting and monitoring system for charities) to be sound.
- I am proposing practical improvements to address challenges charities face. These challenges include the compliance burden, inaccessibility of the current appeals framework, and lack of clarity of the role of charities' officers.

### ***Improving the accessibility of appeals and expanding the decisions available for appeal***

- Currently many charities, particularly smaller ones, find the High Court appeal process to be inaccessible due to the legal complexity and costs involved.



- I propose to use the Taxation Review Authority to hear appeals under the Charities Act. The Authority will provide greater accessibility and the updated appeals framework will allow charities to self-represent, reducing costs.
- The appeals process will become less formal with more relaxed rules of evidence so that more evidence can be potentially considered.
- I also seek to expand the range of decisions that can be appealed. This change will include significant decisions of the Chief Executive of Internal Affairs.
- Further, I propose to extend the timeframe for lodging an appeal to two months making it easier for small charities that might not meet frequently.

#### ***Increasing the regulator's transparency, accountability and decision-making processes***

- I propose to require the charities regulator to publish all decline and deregistration decisions and provide a clear process for charities to object to significant decisions.
- Additionally, I propose to extend the timeframe for submitting information to the regulator from 20 working days to two months, increasing the Charities Registration Board's composition from three to five members, and require the Department of Internal Affairs to consult with the charities sector about guidance material.
- Increasing the number of Board members to five will improve the diversity of the Board and address potential quorum and conflict of interest issues.
- These changes acknowledge that many charities are volunteer run and need time to engage in the decision-making process. These changes also support participation in the charities system, provide greater clarity, and allow charities to focus on their important mahi.

#### ***Requiring larger charities to report reasons for accumulated funds***

- Larger charities (tiers 1, 2 and 3) will be required to report the reasons for their accumulated funds, to provide clarity on why funds are held to help improve public trust and confidence.
- Charities Services will co-design with iwi changes to the annual return form so that te ao Māori views of accumulation are reflected.

#### ***Easing reporting requirements for very small charities***

- Currently, very small charities have disproportionate reporting requirements relative to the level of transparency and accountability required.
- I am proposing to exempt very small charities from the External Reporting Board's financial reporting standards. Very small charities will still be required to file an annual return containing basic financial information.
- This will balance transparent reporting while reducing the compliance burden faced by very small charities. Around 12 percent of all registered charities will benefit from this exemption. The exemption threshold will be set through regulations.

#### ***Improving the compliance and enforcement function***

- This work will make three improvements to the compliance and enforcement function for charities.

- I propose to make explicit the currently implicit obligations for charities to remain qualified for registration.
- The definition of serious wrongdoing will be clarified to include an offence punishable by at least two years imprisonment.
- I propose to enable the Charities Registration Board to disqualify an officer for serious wrongdoing or a significant/persistent breach of obligations, *without* deregistering the charity.

***Four changes will be made to clarify the role of an officer of a charity***

- I intend to clarify the role of an officer as someone who supports the charity to meet its obligations and holds responsibility for governing the charity.
- I propose to amend the definition of officer to include anyone with significant influence regardless of the type of charity.
- I propose that charities must review their rules document every year to encourage a closer look at their governance arrangements.
- I propose to update the disqualifying factors for becoming an officer to include financing of terrorism offences and one officer in a charity must be 18 or over (people can currently hold officer positions from the age of 16).
- These four changes will improve the accountability and governance of charities and produce better alignment with other legislation that charities might be governed by such as the Companies Act and Trusts Act.

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## Section 3: Questions and answers

### General Q&A

#### **What is the purpose of this work?**

The objective of modernising the Charities Act is to support charities to continue their contribution to community wellbeing while ensuring sufficient public transparency. I am making practical improvements to address the challenges that charities face.

#### **What prompted the Modernising the Charities Act work programme?**

There has been significant change since the Charities Act was introduced in 2005. We have seen changes in the wider operating environment for charities, the disestablishment of the Charities Commission, and charities being required to report to financial standards set by the External Reporting Board.

#### **What is the charitable sector like in New Zealand?**

The sector is diverse with around 28,000 registered charities in New Zealand across the width and breadth of community services. Over half of charities in New Zealand are small and are often volunteer run.

#### **How do charities contribute to New Zealand society?**

Charities provide services which respond to community need. During the COVID-19 pandemic, charities provided wide-ranging support such as food parcels and emergency accommodation. Charities also spent over \$19 billion over the last financial year.

#### **How will the changes help charities to support their communities?**

This is a balanced approach; I propose to make it easier for charities to do their work while considering the need for accountability in managing tax-free funds. We have focused on practical improvements that will make the day to day running of charities easier, especially our smallest charities.

#### **What will change for charities in practice?**

The changes I am proposing will have practical benefits for charities and the communities they serve. Some changes are operational and will be implemented over the coming year, while other changes require amendments to the Charities Act.

#### *Additional detail:*

I propose to reduce the burden of financial reporting for our smallest charities, which means more time focusing on their important mahi. Large charities will now share why they have accumulated funds, giving more context to how their financial position contributes to the goals of the charity and its community.

All charities will have a better idea of how the regulator makes decisions affecting them, be more involved in regulatory decision-making, and not have to go to the High Court to challenge a decision, which will save time and money.

**Who did you consult with to develop the policy changes?**

Targeted engagement with key stakeholders in 2021 built on a solid foundation of feedback from public consultation in 2019. The targeted engagement was representative of the sector and included a Core Reference Group, the Charities Sector group, iwi and others.

***Timeframes***

**When do you expect the Charities Act to be amended?**

I intend to introduce a Charities Amendment Bill to Parliament this year and will aim to pass the Bill in 2023.

**Why has the work to modernise the Charities Act taken so long?**

Work was interrupted and placed on hold due to COVID and the need to redeploy resources.

***Fundamental matters – out of scope***

**What happened with all the other issues raised in the 2019 public consultation?**

The changes I have proposed will make practical improvements. I was keen to focus on these areas to make a difference to how charities operate in the short to medium term.

*Additional detail:*

Other more fundamental matters raised in the public consultation, like how te ao Māori principles could be considered in the Act, where the line is for political advocacy by charities, and the definition of charitable purpose could be considered at a later stage.

**Why didn't you look at advocacy by charities?**

I have focused on practical improvements for charities. More fundamental issues like advocacy by charities could be considered at a later stage. This approach allows us to make it easier for charities to operate sooner.

**Will the changes affect the 'four heads of charity'?**

No, this work did not consider the definition of charitable purpose. The four heads of charity (relief of poverty, advancement of education and religion, and any other purposes beneficial to the community) have not changed.

**Did you consider the business activities of charities in this work?**

Business activity is a well-established way for charities to raise funds. I considered matters relevant to charitable businesses, like accumulation of funds and governance. Deciding whether business should be charitable wasn't something I considered as part of this review as it links to more fundamental issues such as charitable purpose.

**Are you going to do more work to improve the Charities Act?**

Government may consider further changes to the Charities Act to consider the other matters raised during public consultation in 2019. No decisions have been made yet on further work.

**Submissions**

**Did submissions to the 2019 consultation inform this work?**

Yes, the submissions were very important in developing these changes.

**I don't agree with the proposed changes – how can I make a submission?**

As part of the legislative process, there will be an opportunity for anyone to make submissions during the Select Committee stage.

**Charities Commission**

**Why aren't you re-establishing the Charities Commission, like the sector is asking for?**

We heard from consultation that some parts of the sector would have more trust in the regulator if it was an independent Crown entity.

I am confident with the independent Charities Registration Board and Charities Services within the Department of Internal Affairs making decisions under the Act. However, I am proposing to enhance the regulator's transparency, accountability, and decision-making processes.

9(2)(f)(iv)

[Redacted text block]

**Judicial appeals**

**How are you going to improve the appeals process for charities?**

By expanding the jurisdiction of the Taxation Review Authority to hear appeals from charities it removes the need to engage the High Court which is complex and expensive. The Authority will be more

accessible as charities will be able to self-represent and rules of evidence will be more relaxed. These changes will reduce costs for charities.

*Additional detail:*

I am also expanding the range of decisions that can be appealed and increasing the timeframe for lodging an appeal. The timeframe for lodging an appeal is proposed to be extended from 20 working days to two months. This will provide smaller, volunteer-run charities more time to hold a governance board meeting to consider their options.

**Regulatory decision-making**

**How are you going to improve regulatory decision-making?**

Many charities are volunteer run and often need time to engage in the decision-making process, and information about the decision-making process could be more readily available to support charities.

The changes will require the Charities Registration Board to publish all decline and deregistration decisions and provide a clear process for charities to object to significant decisions made by the Board.

I want to increase the number of Charities Registration Board members from 3 to 5 to increase diversity and avoid potential quorum issues. I will also require Charities Services to consult with the sector about guidance material.

**Role of charities regulator in work**

**Did Charities Services provide advice that led to the changes?**

Policy advice was provided to me by officials from the Department. While the regulator, Charities Services, is based in the Department, it is not leading this work.

**Reporting requirements**

**How are the changes going to impact on the financial reporting of charities?**

I propose to reduce reporting requirements for very small charities. This will reduce the burden they currently face trying to comply with an accounting standard.

Larger charities will still have to report according to accounting standards and will now have to also report their reasons for accumulating funds. The public are interested in how larger charities manage their money, so this change will provide greater transparency and public trust and confidence.

**How will you maintain public trust and confidence in small charities if they don't have to report as much information?**

Very small charities that are covered by the exemption will still be required to file an annual return containing basic financial information. This will provide enough transparency relative to the risk these charities pose.



**How does this link to External Reporting Board's review of tier 3 and 4 reporting standards?**

I am enabling the Chief Executive of the Department of Internal Affairs to exempt a class of small charities from the tier 4 reporting standard. The Chief Executive will not use the exemption if the External Reporting Board's work aligns with my intent to reduce reporting requirements for small charities.

**How many very small charities will benefit from the exemption from the accounting standard?**

The financial threshold for exemption will be set in regulations and developed through consultation. Based on targeted consultation, officials suggested reducing reporting requirements for tier 4 charities with annual payments under \$10,000 and total assets under \$30,000. Around 12 per cent of all registered charities which are very small charities will benefit from the exemption.

**Accumulation of funds**

**How will te ao Māori views of accumulation of funds be considered?**

Charities Services will co-design changes to the annual return with iwi so that te ao Māori views of accumulation are reflected in the new requirement. This work is ongoing.

**Do you think accumulation of funds by charities is problematic?**

Accumulation of funds demonstrates the charity is growing its resources. Some charities accumulate significant amounts of funds and this is often necessary for future investment. I do not consider accumulation of funds problematic unless the funds are not used for charitable purpose, which could constitute serious wrongdoing and the charity may be deregistered.

What can be problematic is that it is not always clear why charities are accumulating funds. Requiring an explanation in the annual return will address this and it will be up to users such as donors and Inland Revenue to draw their own conclusions.

**Compliance and enforcement**

**Are you proposing any changes to the compliance and enforcement functions of the Charities Services or the Board?**

I am proposing to make improvements to the regulator's compliance and enforcement functions, firstly by making explicit the currently implicit obligations for charities to remain qualified for registration.

I am also clarifying part of the definition of serious wrongdoing to include an offence punishable by at least two years imprisonment. The Charities Registration Board will also be able to disqualify an officer for serious wrongdoing or a significant or persistent breach of obligations, without deregistering the charity.

**Governance**

**How will you improve the governance of charities?**

I am clarifying who should be an officer and that their role is to support the charity to meet its obligations. I am also requiring charities to review their rules document annually and updating the factors that might disqualify an officer.

This isn't about coming down hard on charities, but about improving the public confidence in the people who run our charities.

**Are you planning to change who can be an officer?**

I am broadening the definition of an officer to include anyone with significant influence over the charity, regardless of the type of charity. This will give Charities Services a full view of the people operating the charity.

I am planning to disqualify persons with a criminal conviction for financing of terrorism from becoming officers of charities.

***Link to the Incorporated Societies Act***

**How does the new Incorporated Societies Act affect the proposed Charities Amendment Bill?**

Officials at the Department worked closely with MBIE to ensure that the Bill and the new Incorporated Societies Act would align in the areas that matter. Common areas include the definition of officer, less financial reporting requirement for small entities and alignment around disqualifying officers.

9(2)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

**Are you looking at whether charities should still receive tax benefits?**

Charities make important contributions to the wellbeing of New Zealanders. One of the ways the Government supports charities is by providing favourable tax treatment. Tax issues are matters for the Minister of Revenue and Inland Revenue to consider. Favourable tax treatment of charities is subject to monitoring and review by Government to ensure its effectiveness.

9(2)(f)(iv)

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**Section 5: Stakeholders involved in targeted consultation in 2021 who may be particularly interested in an announcement**

Representation	Organisation / Individual	Description
<b>Charities Sector</b>	Core Reference Group	The Core Reference Group consists of Sue Barker, Sai Lealea, Dave Henderson and Charmaine Brown. The Group was consulted multiple times during 2021 including on proposed final options.
	Sector Group	The Charities Sector Group was started to provide an opportunity for members of the charities sector to interact directly with Charities Services. Core membership of the group includes representatives from the below organisations: <ul style="list-style-type: none"> <li>• Charity Law Association of Australia and New Zealand</li> <li>• Chartered Accountants Australia and New Zealand</li> <li>• Hui E! Community Aotearoa</li> <li>• NZ Navigator Trust</li> <li>• Philanthropy New Zealand</li> <li>• Volunteering New Zealand</li> </ul>
	Sector Group member: Charities Law Association of Australia and NZ (CLAANZ)	Sue Barker represented CLAANZ on the Sector Group. Sue was on the Core Reference Group, and she is the director of Sue Barker Charities Law, a boutique law firm based in Wellington, specialising in charities law and public tax law. Sue is currently on a sabbatical as the 2019 New Zealand Law Foundation International Research Fellow, undertaking research into the question "What does a world-leading framework of charities law look like?"
	Sector Group member: Chartered Accountants Australia and New Zealand (CAANZ)	CAANZ promotes the 'Chartered Accountants' designation, and high ethical standards. They engage with government on behalf of their members and have an interest in a range of issues.
	Sector Group member: Hui! E	Hui E! is a peak body for tangata whenua, community and voluntary sector in Aotearoa New Zealand.
	Sector Group member: Philanthropy NZ	Philanthropy NZ is the peak body representing and supporting philanthropy and grant making in Aotearoa New Zealand. Members include trusts, foundations, community groups, family, individuals, investors, local government, iwi and not-for-profit organisations.
	Sector Group member: New Zealand Navigator Trust	The NZ Navigator Trust is creating a growing portfolio of digital spaces to equip a thriving charitable and community sector in Aotearoa New Zealand.
	Sector Group member: Philanthropy NZ	Philanthropy NZ is the peak body representing and supporting philanthropy and grant making in Aotearoa New Zealand. Members include trusts, foundations, community groups, family, individuals, investors, local government, iwi, and not-for-profit organisations.

	Sector Group member: Volunteering New Zealand	Volunteering New Zealand is an association of volunteer centres, and national and regional organisations with a commitment to volunteering in Aotearoa New Zealand.
	Tier 1 and 2 charities and representative bodies	Some tier 1 and 2 charities had an interest in the business and accumulation policy proposals. Examples of tier 1 and 2 charities include: SPCA NZ, Medical Assurance Services, Plunket, St George's Hospital, NZ College of Midwives and representative bodies like the InterChurch Bureau.
	Private foundations (a subset of Tier 1 and 2 charities)	Accumulation can be important to private foundations, who had an interest in both the business and accumulation policy proposals.
<b>Small Charities</b>	Specific individuals involved in small charities	We engaged with individuals involved in small charities. We identified these individuals from public submissions in 2019.
<b>Regulator</b>	Charities Services and Charities Registration Board	Charities Services and the Charities Registration Board together comprise the regulator.
<b>Government</b>	Inland Revenue (IR)	Charities' registration status connects to their tax treatment. The Government Response to the Tax Working Group's final report was that business and accumulation issues would be considered as part of IR's Tax Policy Work Programme and through work to modernise the Charities Act.
	The External Reporting Board (XRB)	XRB set the reporting standards for not-for-profits and provided input on recommendations relating to reporting/transparency of funds.
	Ministry of Business, Innovation and Employment (MBIE)	MBIE advised on the Incorporated Societies Act. This Act affects the significant proportion of charities that are also incorporated societies.
	Te Puni Kokiri (TPK) and Te Arawhiti	We consulted TPK and Te Arawhiti on the impact of the proposals on Māori charities/iwi/post-settlement governance groups.
	Ministry of Justice (MoJ) and Crown Law Office	MoJ and Crown Law were key contributors in the policy proposals regarding the appeals process.
<b>Iwi and Māori</b>	Waikato Tainui Raupatu Lands Trust and Group and Ngāi Tahu Charitable Group	Iwi, particularly mature post-settlement groups such as Waikato Tainui and Ngāi Tahu, had interests in the business and accumulation topics. This is because these groups tend to maintain substantial levels of assets and surplus funds and operate several businesses to grow settlement funding and provide benefits for future generations.
	Te Hunga Rōia Māori o Aotearoa – The Māori Law society	Te Hunga Rōia Māori o Aotearoa provides te iwi Māori representation in the legal profession.
<b>Academics</b>	Ian Murray	Ian Murray is an academic based in Australia who has published research on charity law and accumulation.

	Michael Gousmett	Michael Gousmett is an independent researcher who has written extensively about charitable business.
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## Section 6: List of policy proposals for modernising the Charities Act

Topic	Policy proposal	Legislative change?
<b>Regulatory decision-making and appeals framework</b>	Require the regulator to publish decisions	Yes
	Increase the Charities Registration Board to five members	Yes
	Expand the objections process and provide the opportunity for entities to speak to the decision-maker	Yes
	Expand the decisions that can be appealed to include all Board decisions and Charities Services' decisions that could have a significant impact on the entity	Yes
	Establish appeals to first be heard (as a rehearing) by an amended Taxation Review Authority	Yes
	Increase the timeframe for entities to provide additional information for an application, object to a decision, or lodge an appeal to two months	Yes
	Require Charities Services to consult with the sector on significant draft guidance material	Yes
	Clarify regulatory decision-making policy and procedures	No
	Review the Department's performance measures relating to Charities Services	No
<b>Accumulation of funds</b>	Require tier 1-3 charities to report the reasons for their accumulated funds in their annual return (partner with iwi to design changes to the annual return form)	No
<b>Reporting requirements</b>	Reduce reporting requirements for very small charities	Yes
<b>Obligations of charities and officers</b>	Expand the definition of officer to include everyone who has significant influence over the charity	Yes
	Require at least one officer to be at least 18 years old	Yes
	Make financing of terrorism offences a disqualifying factor for officers	Yes
	Clarify that the role of officers is to support the charity to meet its obligations	Yes
	Require charities to review their rules document annually	Yes
	Make more explicit all the key, ongoing obligations under the Act	Yes
	Amend the definition of 'serious wrongdoing' to express a more consistent level of serious behaviour	Yes
	Establish a new power for the Board to disqualify an officer for 'serious wrongdoing' or significant/persistent breach of obligations	Yes
	Issue model rules under section 10 of the current Act	No
	Provide more education, guidance and training for officers	No
Undertake a post-implementation review of operational practice on the use of compliance and enforcement tools	No	



# Community and Voluntary Sector briefing

**Hon Priyanca Radhakrishnan**  
**Minister for the Community and Voluntary Sector**

**Title: Research fellowship report on charities law reform released**

**Date: 12 May 2022**

## Key issues

The report for the 2019 New Zealand Law Foundation research fellowship on “What does a world-leading framework of charities law look like?” was released on 19 April 2022. The fellowship was awarded to Sue Barker of Sue Barker Charities Law.

The report makes 70 recommendations. The main recommendation is for the work on the Charities Act 2005 to be transferred to Te Aka Matua o te Ture (the Law Commission) for an independent first principles review. Most of the other recommendations cover matters out of scope of the current work, but there is some alignment with Cabinet policy decisions.

The report will likely be part of Sue Barker’s submission to the select committee that considers the draft bill and may be endorsed by other stakeholders.

## Action sought

Note the release of the report with the recommendations outlined in **Appendix A.**

## Timeframe

At your convenience.

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Jayne Beggs	Policy Manager	9(2)(a)	✓
Jess Henderson	Senior Policy Analyst	9(2)(a)	

Return electronic document to:	9(2)(a)
Cohesion document reference	6EYAVYC5ZNWP-127011824-1163
Ministerial database reference	CVS202200073

## Purpose

1. This briefing provides you information on the recently released research fellowship report “What does a world-leading framework of charities law look like?”, including how the recommendations of the report compare to policy decisions to modernise the Charities Act 2005 (the Act).

## Background

### ***The New Zealand Law Foundation research fellowship report on charities law reform has been released***

2. The 2019 New Zealand Law Foundation International Research Fellowship Te Karahipi Rangahau a Taiao (the Fellowship) was awarded to Sue Barker to answer the question “What does a world-leading framework of charities law look like?”. The final report was released on 19 April 2022.<sup>1</sup>
3. Sue Barker leads a boutique Wellington law firm specialising in charities law and public tax law and is a director of the Charity Law Association of Australia and New Zealand. As a key stakeholder in the charitable sector, Ms Barker is a member of the Core Reference Group for work to modernise the Act and a member of the Charities Services’ Sector Group.

### ***The research was undertaken in parallel with your work to modernise the Charities Act***

4. Work to modernise the Act was initiated in 2018, followed by a public consultation on key issues in 2019. The Fellowship started in March 2020, with a view to providing an independent perspective of charities law reform that could feed into the Government’s work. However, the release of the final research report was extended to April 2022.
5. Ms Barker’s research explored charities law in Australia, Canada, England, Wales, Ireland and the United States of America, and was informed by hui, interviews and workshops with stakeholders. The 2019 public consultation submissions we received were also an input into the report.
6. While policy decisions to modernise the Act have already been made by Cabinet, Ms Barker was able to share relevant research findings as part of targeted engagement in 2021. As such, Ms Barker’s work helped to inform our policy development.

## Recommendations of the report

### ***Most of the report’s recommendations relate to matters out of scope of current work to modernise the Charities Act***

7. The report makes 70 recommendations and proposes a draft amendment bill. The proposals are consistent with what we heard from Ms Barker during the 2019 public consultation and targeted engagement in 2021.
8. Most of the recommendations relate to matters out of scope of this stage of the modernisation work. This includes proposals to amend the purposes of the Act, restructure the Charities Registration Board and Charities Services into an independent

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<sup>1</sup> Due to the length of the report we have not attached it to this briefing. The report can be accessed at <https://www.lawfoundation.org.nz/wp-content/uploads/2022/04/Charities-Law-Reform-Report-April-2022.pdf>.

Crown entity, and introduce new requirements around fundraising standards. There are also several tax related proposals for the Income Tax Act 2007 and Tax Administration Act 1994.

9. The primary recommendation is to transfer the Government's work on the Act to Te Aka Matua o te Ture, the Law Commission, for an independent first principles review. The report proposes that this review consider the definition of charitable purpose, adopting Australian charities' advocacy law, government contracting arrangements with not-for-profits and other wide-ranging matters. 9(2)(f)(iv)

***The remaining recommendations are generally broader than Cabinet policy decisions***

10. Some of the recommendations are consistent with Cabinet policy decisions. For example, the report recommends that the Taxation Review Authority be empowered to hear charities appeals. The report also recommends that Charities Services publicly consult on draft guidance material and that the timeframe to lodge an appeal is extended from 20 working days to 60 days. Cabinet has agreed to require Charities Services to consult with sector representatives on guidance and to provide charities two months to lodge an appeal.
11. The remaining recommendations look to address issues that we did not identify through the policy process or propose changes that we do not support. For example, providing for appeals *de novo*, introducing a new duty on officers to manage conflicts of interest, and undertaking a public awareness campaign to restore confidence in charities running businesses and accumulating funds.
12. We have outlined our position on these proposals, and the other recommendations, in **Appendix A**. This includes some recommendations that could be minor changes to improve the workability of the Act. We will consider whether it is possible to include them in the amendment bill being drafted and advise you accordingly.

***The report may be submitted to the select committee for the draft amendment bill***

13. We anticipate that Ms Barker will make a submission to the select committee that considers the bill we are currently drafting, based on the proposals in her report. Ms Barker's submission may be supported by other stakeholders as there was some endorsement of Ms Barker's views in the 2019 and 2021 consultations. We will be prepared to respond to queries raised by the select committee as required.

## Recommendation

14. We recommend that you **note** that the research fellowship report on charities law reform has been released with the recommendations outlined in Appendix A.



Jayne Beggs  
Policy Manager

Hon Priyanca Radhakrishnan  
Minister for the Community  
and Voluntary Sector

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Released under the Official Information Act 1982



**Appendix A: Recommendations of the research fellowship report “What does a world-leading framework of charities law look like?”**

#	Recommendation	Comments
1.0	That the government’s review of the Charities Act 2005 is transferred to Te Aka Matua o te Ture – the Law Commission – for an independent first principles review taking into account the wider legal framework applicable to charities.	Out of scope.  9(2)(f)(iv) [Redacted]
1.1	That the independent first principles review recommended in recommendation 1.0 include a review of the contracting arrangements for government services for charities and other not-for-profit entities, taking into account the findings of the Australian Productivity Commission in its 2010 Contribution of the Not-for-profit Sector report.	Out of scope.  9(2)(f)(iv) [Redacted]
2.1	That the New Zealand charities law framework is re-orientated to ensure a focus on charities’ purposes. To this end, that the charities legislation articulates one simple overarching fiduciary duty, applicable to all registered charities irrespective of underlying legal structure, and to all involved in governing them, to act in good faith to further the entity’s stated charitable purposes in accordance with its rules.	We consider the Act is already focused on charitable purpose, but the requirement to maintain charitable purpose to remain registered is not always clear. Cabinet agreed to make it more explicit that remaining qualified for registration means maintaining charitable purpose.
2.2	That New Zealand charities legislation specifically requires all persons performing functions or exercising powers under it to do so in a manner that recognises and respects the principles of Te Tiriti o Waitangi.	Out of scope.  We note that while the Act is not explicit on Te Tiriti o Waitangi, it must still be considered when administering the Act.  9(2)(f)(iv) [Redacted]
3.1	That the statutory definition of charitable purpose is reviewed, with a view to expanding the statutory “heads” of charity along the lines undertaken by Australia, England and Wales, Northern Ireland, Ireland, and Scotland, and recommended in Canada.	Out of scope.  9(2)(f)(iv) [Redacted]
3.2	That the legislation set out the test to be applied in determining whether a purpose is charitable.	Out of scope.  The test is currently determined by the regulator based on the Charities Act and case law. However, this could be considered as part of a review looking at charitable purpose.

3.3	That the legislation clarify that the charitable purpose test applies to an entity's purposes, as ascertained under normal rules of construction of its constituting document, not to activities and not to the entity itself.	Out of scope.  This could be considered as part of a review looking at charitable purpose.
4.1	That the legislation clarify that a charity may carry out advocacy activities in furtherance of its stated charitable purposes, with only three restrictions: (i) Those contained in the general law. (ii) Those contained in the charity's constituting document. (iii) Otherwise, charities may not be partisan: that is, charities may not engage in activities promoting or opposing a political party, elected official, or candidate for political office.	Out of scope.  9(2)(f)(iv) [REDACTED] [REDACTED] [REDACTED] Advocacy is also being considered by the Courts in the context of the Family First Supreme Court appeal. The outcome of the appeal will provide additional case law on advocacy activities.
4.2	That the legislation clarify that potential fiscal consequences of registration are not relevant to the question of whether a purpose is charitable.	Out of scope.  This could be considered as part of a review looking at charitable purpose.
4.3	That, as part of the independent first principles charities law review recommended in recommendation 1.0, consideration be given to implementing legislation similar to the Not-for-profit Sector Freedom to Advocate Act 2013 in Australia, to respect the independence of charities by specifically prohibiting government contracts from including clauses that prevent or restrict charities from commenting on, advocating support for or opposing changes to law, policy or practice.	Out of scope.  This could be considered as part of a review looking at advocacy by charities.
5.1	That Charities Services' approach, set out in its October 2017 ICE Foundation case report, which includes requiring a social enterprise to demonstrate viability at the outset as a precondition to charitable registration, is discontinued and eligibility for registration is instead assessed according to normal principles.	It is the role of the Charities Registration Board and Charities Services to apply the law when considering registration applications. However, we considered whether it was clear enough how they were applying the law to make decisions and found that there is a need to improve transparency of decision-making. You agreed operational changes for Charities Services to publish decision-making processes.
5.2	That a public awareness campaign is conducted to restore public confidence that running a business/carrying out social enterprise is a legitimate and important activity for charities.	While the public sometimes raise concerns about charities running businesses and potentially having a competitive advantage over other businesses, we do not consider it necessary to run public awareness campaign. Business is a legitimate charitable activity.
5.3	That, as part of the public awareness-raising campaign recommended in recommendation 5.2, awareness is also raised of the non-distribution constraint and the destination of funds test: charities running businesses do not have a competitive advantage over their for-profit counterparts and there is no basis to remove their income tax exemption. Charities running businesses are in fact social enterprises and their work should be enabled rather than inhibited.	As above.



5.4	That, as part of the independent first principles charities law review recommended in recommendation 1.0, the issue of whether imputation credits should be refundable to registered charities is comprehensively assessed, taking into account the comprehensive transparency and accountability requirements to which registered charities are now subject, and the benefits that would accrue from removing a significant barrier to the investment of philanthropic funds in New Zealand companies.	Out of scope.  Imputation credits are a tax matter.
6.1	That charities' access to a de novo oral hearing of evidence is reinstated.	De novo hearings provide for a new decision-maker to assess the matter afresh, without taking into consideration the decision that the Charities Registration Board or Charities Services came to. This typically allows for new evidence to be presented. We did not recommend de novo hearings for charities appeals. De novo hearings are expensive and time consuming for all parties. The appeals body can also currently consider new evidence if it sees fit.
6.2	That, to ameliorate current significant delays in making registration decisions (sometimes extending to several years), the charities' legislation specifically allow a registered charity, or an applicant for registration, to treat their registration as having been denied if a decision has not been made within 6 months, thereby allowing the matter to progress to an independent judicial authority for determination on the basis of a full oral hearing of evidence.	We did not identify a problem with registration timeframes. During the 2020–21 financial year, registration decisions, on average, were made within 32 business days of receiving all necessary information. This was down from 58 days on average in 2019–20.  If appeals take time, the registration can be backdated to the time of application.
6.3	That charities are given the option of appealing decisions made under the Charities Act to either the Taxation Review Authority or the High Court at their choice, as was the case prior to the Charities Act, remains the case under tax legislation, and is also the case in other jurisdictions.	Cabinet has agreed to empower the Taxation Review Authority to hear Charities Act appeals. We considered whether there should be a choice to appeal to the Authority or to the High Court. Having an option is not standard or recommended practice. The Authority will have the power to refer appeals to the High Court.
6.4	That the jurisdiction of the Taxation Review Authority to hear appeals under the Charities Act is further extended to hear appeals under other legislation applicable to charities, such as the new Incorporated Societies Act, the Charitable Trusts Act 1957, and the Trusts Act 2019.	Cabinet has agreed to empower the Taxation Review Authority to hear Charities Act appeals. It was not in scope to consider appeals frameworks for other legislation applicable to charities.
6.5	That the timeframe for appealing decisions under the Charities Act is extended to 60 days, in line with Australia.	Cabinet has agreed to extend the timeframe to two months, which is equal to approximately 60 days.

6.6	That the legislation clarifies that charities remain able to appeal substantively, to an independent judicial body, all decisions made under the Charities Act. If, following an open consultation process, any specific decisions are identified as genuinely not amenable to appeal, these should be specifically carved out by statute (following the approach taken in s 249 of the Incorporated Societies Act 2022).	Cabinet has agreed that all decisions of the Charities Registration Board and certain significant decisions of Charities Services should be subject to appeal. The draft amendment bill will be clear which decisions are included.  We note that we consulted on the decisions available for appeal during targeted engagement. Based on feedback, we advised expanding appealable decisions to include significant Charities Services decisions.
7.1	That the agency responsible for administering charities legislation is restructured as an independent Crown entity that reports directly to Parliament.	Out of scope.
7.2	That, while access to registration turns on the definition of charitable purpose, the agency responsible for administering charities legislation has and continuously develops deep expertise in trust law.	The Charities Registration Board and Charities Services has broad knowledge of the legislation affecting charities and continue to keep abreast of relevant case law.
7.3	That a Māori Advisory Committee is established to assist the agency responsible for administering charities legislation to give effect to the principles of Te Tiriti o Waitangi and tikanga principles.	Out of scope.  The Charities Services Sector Group includes members from Māori organisations, and there is Māori representation on the Charities Registration Board.
7.4	That the issue of how best to ensure the charitable sector has representative and adequately funded pan-charity policy capacity, and meaningful input into policy development, is specifically consulted upon as part of the independent first principles review recommended in recommendation 1.0.	Out of scope.
7.5	That a “home in government” is created for the charitable sector, separate from the agency responsible for administering the Charities Act, and centrally located, for example within the Department of Prime Minister and Cabinet.	Out of scope.
8.1	That use of the term “regulator” is discontinued in a charities law context, and the term “registrar” used instead.	We did not identify a problem with the use of the term “regulator” in the charities context.
8.2	That the purpose of the Charities Act is clarified as being “to enable and support a diverse, robust, vibrant, independent, innovative, and sustainable charitable sector, in recognition of the direct and indirect benefits such a charitable sector provides in a free and democratic society” (based on the second object of the Australian legislation adapted for the New Zealand context). That the current purpose to promote public trust and confidence in the charitable sector (section 3(a)) is returned to a function of the agency responsible for administering the Charities Act. That the current purpose to encourage and promote the effective use of charitable resources (section 3(b)) is repealed.	Out of scope.
8.3	That the legislation explicitly preserves recourse to equitable principles in a charities law context, in a similar manner to that provided for trusts more generally by the Trusts Act 2019.	Out of scope.

8.4	That the legislation explicitly provides for recourse to tikanga principles in a charities law context, where appropriate.	Out of scope.
8.5	That the legislation uses the term “registered charity” instead of the term “charitable entity”.	This is not a technical matter we considered but could be a minor drafting change that improves the clarity of the Act. We will consider this further and advise you accordingly.
8.6	That the legislation uses the term “responsible person” instead of the term “officer”, and that the substance of the definition clearly limits its scope to members of the charity’s governing body (extended to include the directors of a corporate trustee).	We did not identify a problem with the term “officer”. However, we did find that it is not always clear who is included in the definition. Cabinet has agreed to amend the definition of officer to clarify that it includes anyone with significant influence over the charity.
8.7	That the definition of “serious wrongdoing” is reworked to better support the overarching legal duty of every registered charity, and every responsible person of a registered charity, to act in good faith to further the charity’s stated charitable purposes in accordance with its rules.	Cabinet has agreed to amend the definition of “serious wrongdoing” to improve its workability, by replacing the reference to an offence with a reference to an offence that is punishable by imprisonment for a term of two years or more.  Cabinet has also agreed that the Act make more explicit the ongoing requirements for charities.
8.8	That the legislation does not preclude the promotion of amateur sport from being a charitable purpose in its own right in appropriate circumstances (an outcome which is currently precluded by section 5(2A) of the Charities Act 2005).	Out of scope.  This could be considered as part of a review looking at charitable purpose.
8.9	That the legislation does not incorporate the words “for example, advocacy” within the ancillary purpose rule (currently contained in section 5(3) of the Charities Act 2005).	Out of scope.  This could be considered as part of a review looking at advocacy by charities.
8.10	That the description of an ancillary purpose (currently contained in section 5(4) of the Charities Act 2005) does not include references to “incidental” and “independent” purposes, in order to ensure consistency with the underlying common law in New Zealand and to reduce the scope for subjectivity.	Out of scope.  This could be considered as part of a review looking at charitable purpose.
8.11	That the legislation clarify the reasons for which regard is to be had to a charity’s activities (s 18(3) of the Charities Act 2005).	Out of scope.  This could be considered as part of a review looking at charitable purpose.
8.12	That, as part of the independent first principles review recommended in recommendation 1.0, a comprehensive data project is undertaken to analyse what improvements could be made to the contents of the charities register, and how better use could be made of charities register information.	Out of scope.
8.13	That a public awareness campaign is conducted to raise awareness, within the public and government, of the existence, purpose and benefits of the charities register.	Out of scope.

8.14	That the ability for charities to seek binding rulings from Inland Revenue is retained but that, in the interests of transparency, binding rulings relating to charitable registration are disclosed on the charities register, to help people understand why some charities are registered when similar charities are not.	A binding ruling is Inland Revenue’s interpretation of how a tax law applies to a person or entity. Binding rulings can be used to clarify how taxation law applies to income derived by, or for the benefit of, charities. This could include an interpretation of charitable purpose. The Charities Registration Board/ Charities Services are required to follow these rulings under section 13 of the Act. We did not propose any changes to binding rulings. Binding rulings are infrequent.
8.15	That section 20(2)(a) of the Charities Act, which relates to now-repealed gift duty, is removed as otiose.	We will consider this further as it may be an appropriate minor and technical amendment to the Act.
8.16	That sections 44 - 49 of the Charities Act 2005, which enable affiliated or closely related entities to be treated as a single entity for the purposes of charitable registration, are removed as they have been superseded by the financial reporting rules for charities introduced from 2015.	Out of scope.  We did not consider whether any fundamental changes were required to the single entity framework.
8.17	That, as part of the independent first principles review recommended in recommendation 1.0, the financial reporting requirements for charities are comprehensively reviewed, incorporating multi-disciplinary expertise, including in standard-setting, accounting, auditing, information technology, data, tikanga, trust law, as well as coalface experience of charities, to ensure a balance is struck between visibility and accountability on the one hand, and not undermining small charities’ ability to deliver on their charitable purposes on the other.	We considered the reporting requirements framework for small charities. Cabinet agreed to provide an exemption power and associated regulations to reduce reporting requirements for the smallest charities. We also note that the External Reporting Board, as the agency responsible for reporting standards, is consulting on simplified and reduced reporting standards for tier 3 and 4 charities.
8.18	That the review of the financial reporting requirements recommended in recommendation 8.17 include the design of an online financial reporting tool for charities that would reduce duplication and facilitate data collection.	We considered the option of improved reporting tools for charities as part of policy development on reporting requirements for small charities. We identified that reducing the reporting standard would better address the problem, given the support and education Charities Services already provide to help charities with their reporting requirements. An online financial reporting tool may have further benefits but would require funding.
8.19	That the review of the financial reporting requirements recommended in recommendation 8.17 consider the extent to which annual information provided by charities could also be widely used by government agencies and other funders in a “report once, use often” framework.	Out of scope.
8.20	That the review of the financial reporting requirements recommended in recommendation 8.17 looks beyond outputs and outcomes to ways to identify, measure and report on the impact generated by charities, taking into account international research and development in this area.	Out of scope.  We note that nothing precludes charities from reporting on the impact they have made.

8.21	That the review of the financial reporting requirements recommended in recommendation 8.17 includes analysis of the concept of fund accounting, as that concept is dealt with in the SORP (FRS 102 (Accounting and Reporting by Charities: Statement of Recommended Practice applicable to charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland)).	Out of scope.  The External Reporting Board is responsible for preparing and issuing accounting standards for not for profit entities.
8.22	That the timeframe for notifying changes under section 40 of the Charities Act 2005 is amended to 20 working days for consistency with other applicable legislation, to encourage a practice of notifying changes to all applicable registrars as part of the process by which they are made and to improve the accuracy of the charities register.	We did not identify a problem with the timeframe for notifying changes.
8.23	That, as part of the independent first principles review recommended in recommendation 1.0, consideration is given to other measures that would improve compliance with the important duty to notify changes, which is currently widely observed in the breach. Suggestions include potential technological improvements, raising awareness of the importance of complying with the duty, setting key performance indicators for the Charities Registrar, and potentially establishing a Charitable Incorporated Organisation structure (which would eliminate the need for dual registration).	We did not identify a problem here. Charities Services regularly work to support and educate charities on how to comply with the Act.  We also note on that the suggestion to establish a Charitable Incorporated Organisation structure adds yet another entity structure when the new Incorporated Societies Act 2022 has just been enacted. Further not all incorporated societies are charitable.
8.24	That section 39 of the Charities Act, which currently requires only telephone and internet collectors to disclose a charity's registration number on request, is extended to all types of fundraising carried out by or on behalf of a registered charity.	We did not consider this matter, but it could be a minor and technical amendment that improves consistency. We will consider this further and advise accordingly.
8.25	That the Charities Act articulates a new duty, requiring every registered charity, and every fundraiser acting on behalf of a registered charity, to adhere to professional fundraising standards when carrying out a "fundraising activity" (widely defined to include any activity seeking to raise funds, such as requesting funds, canvassing for subscriptions, selling raffle or lottery tickets, selling tickets to a fundraising event, selling merchandise, and appealing for grants, donations, or sponsorship).	Out of scope.  We note that the Gambling Act 2003 sets out rules/standards for some of the activities noted.
8.26	That the current system of self-regulation of fundraising provided by the Fundraising Institute of New Zealand and the Public Fundraising Regulatory Association is better supported, including by provision of reliable, untagged, core operational funding to allow them to focus on maintaining and strengthening fundraising standards in New Zealand.	Out of scope.
8.27	That the charities law framework articulates a broad high-level duty on responsible persons of registered charities to disclose and manage perceived or actual conflicts of interest.	We did not recommend introducing new duties for officers as duties are provided for in the prevailing legislation most officers are subject to, such as the Trusts Act 2019, Companies Act 1993 and the Incorporated Societies Act 2022.

8.28	That, in the interests of transparency and accountability, the agency responsible for administering charities' legislation is required to publish its own procedures for managing actual or perceived conflicts of interest.	We did not identify an issue with the decision-makers conflicts of interests. Charities Registration Board members must declare and manager their conflicts, and Charities Services staff must do the same with their employer. Cabinet has also agreed to multiple changes to improve the transparency of the decision-makers.
8.29	That, as part of the independent first principles review recommended in recommendation 1.0, section 43 of the Charities Act, which currently provides Charities Services with a unilateral and apparently unappealable power to exempt charities from compliance with a wide range of statutory provisions, is subject to a comprehensive review as to its continuing appropriateness.	Cabinet has agreed for significant decisions of Charities Services to be subject to appeal. This includes decisions to grant, vary or revoke an exemption from compliance requirements.
8.30	That whatever agency is responsible for administering charities' legislation is required to prepare a statement of intent, at least every three years, and to make a draft statement of intent available for public consultation before finalising.	The Department of Internal Affairs, which includes Charities Services, is already subject to annual reporting requirements. Charities Services voluntarily publish a separate annual report. Work is also underway to review the Department's performance measures as they relate to Charities Services.
8.31	That in order to improve transparency and accountability of decision-making, the agency responsible for administering charities' legislation is required to prepare its own annual report, and that certain information is specifically required to be included within it, such as the numbers of applications for registration that have been voluntarily withdrawn, the numbers of entities that have been deregistered, and the reasons why.	The Department of Internal Affairs is subject to annual reporting requirements, and Charities Services also publish a separate annual report. This includes information on the number of withdrawn applications. Work is also underway to review the Department's performance measures as they relate to Charities Services.
8.32	That refinements are made to the requirement to hold an annual meeting in order to strengthen its utility as an accountability mechanism.	We did not identify a problem with the annual meeting requirements.
8.33	That test case litigation funding is made available to develop the law in matters of public interest.	Cabinet agreed to introduce a more accessible appeals body for charities. Test litigation funding was an option we considered but addressing the problem of inaccessible appeals was more important.
8.34	That the question of whether persons other than the person directly affected by a decision should have standing to bring an appeal is considered as part of the independent first principles review recommended in recommendation 1.0	Cabinet agreed that the decision-maker and the charity should be party to the appeal. It is not best practice to allow a person or entity to appeal a decision that does not directly impact them.
8.35	That sections 54 and 55 of the Charities Act, which relate to the power to issue and publish warning notices, are repealed and replaced with a specific power to enter into compliance agreements.	We did not identify an issue with warning notices. The status quo does not preclude the use of compliance agreements.
8.36	That, in the absence of a rationale for its retention, section 75 of the Charities Act, which provides that there is no duty or obligation on the Charities Registration Board or Charities Services to supervise the affairs of or exercise any powers in respect of any person, is removed.	We did not identify an issue with section 75. Charities are self-governing entities.



8.37	That no further piecemeal amendments are made to legislation affecting charities pending the independent first principles review of the charities law framework recommended in recommendation 1.0 above.	A Charities Act amendment bill is planned to be introduced this year, that focuses on making practical changes before potentially looking at more fundamental matters at a later stage.
8.38	That the circumstances in which the public interest test (currently set out in section 35(1) of the Charities Act) might protect a charity from deregistration are clarified and made publicly available.	Out of scope.
8.39	That the legislation makes clear the exercise of any power to ban persons from being officers or responsible people of a registered charity cannot be exercised in the absence of an order of a court.	The Charities Registration Board can make an order to disqualify an officer on deregistration of the charity, which does not require an order by the Court. Cabinet has agreed to expand the status quo to allow the Board to disqualify an officer without deregistering a charity. The charity or officer could appeal this decision.
8.40	That the government co-designs with the charitable sector a civil society strategy, along the lines adopted in the United Kingdom and proposed in Australia, articulating a vision for maximising the potential of the charitable sector, and the wider civil society in which it sits, to deliver benefits for Aotearoa New Zealand	Out of scope.
8.41	That the legislation requires a post-implementation review after five years, following the model of Australia, England and Wales, and Ireland.	After implementation of the Act changes, we will continue to monitor its effectiveness and provide advice accordingly.
8.42	That section 72A of the Charities Act is repealed, and the power to prescribe forms and other requirements is returned to regulations.	We did not identify a problem with Charities Services prescribing forms. The status quo provides flexibility to ensure the forms are always user friendly for charities. Charities Services must consult on the annual return form before making changes.
8.43	That section 32E(1A) of the Tax Administration Act 1994 is amended so that all registered charities are automatically included on the RWT exemption register, not just those structured as charitable trusts	Out of scope (tax matter).
8.44	That any guidance issued by Charities Services (or whatever agency is responsible for administering the Charities Act) is required to follow a public consultation process, similar to the Generic Tax Policy Process, before being finalised.	Cabinet has agreed that the Act require Charities Services to consult with sector representatives (not the public) on significant guidance.
8.45	That the criteria for inclusion on schedule 32 of the Income Tax Act 2007 (“overseas donee status”) are revisited to better support charities working to tackle pressing global challenges such as climate change, biosecurity, pandemic risk, global safety and stability, and the like.	Out of scope (tax matter).





# Community and Voluntary Sector aide memoire

Hon Priyanca Radhakrishnan  
Minister for the Community and Voluntary Sector

Title: **Modernising the Charities Act 2005: Summary of proposals and talking points**

Date: 27 May 2022

## Ngā take matua | Key issues

You are announcing the proposed changes to the Charities Act 2005 on 2 June 2022 that Cabinet agreed to in February 2022. The information in this aide memoire supports your announcement and summarises the changes, provides talking points and potential questions and answers, and provides information about key stakeholder's views.

## Te mahi e rapua ana | Action sought

Note the contents of this aide memoire that supports the announcement of the policy changes to the Charities Act 2005

## Timeframe

By 2 June 2022

Contact for telephone discussions (if required)

Name	Position	Contact Number	Suggested 1 <sup>st</sup> contact
Jayne Beggs	Policy Manager	9(2)(a)	✓
Kelsea Whyte	Senior Policy Analyst	9(2)(a)	

Return electronic document to:	9(2)(a)
Cohesion document reference	6EYAVYCSZNWP-127011824-1173
Ministerial database reference	CVS202200096

Jayne Beggs  
Policy Manager

## Te kaupapa | Purpose

1. This aide memoire provides you with key information about the changes to modernise the Charities Act to support you with any media or stakeholder questions about the work. The aide memoire contains **Talking points and potential questions and answers (Appendix A)** and a **Summary of the policy decisions, options considered and stakeholder views (Appendix B)**.

## Key points about modernising the Charities Act 2005

### *Objective of the work*

2. The objective of the work to modernise the Charities Act is to encourage and support charities to thrive, while ensuring sufficient transparency. If the objective is met, we should see ongoing trust and confidence in charities who continue to drive initiatives that support community wellbeing.

### *Scope of the work*

3. In May 2018, Cabinet agreed to a review to modernising the Charities Act to ensure it remained fit for purpose and suited the needs of the diverse charitable sector. The fundamentals of the Charities Act as a registration, reporting and monitoring system were noted to be sound. Cabinet agreed to consider substantive issues with the Act but not first principles. In March 2021, you confirmed the scope of the review with a focus on practical issues with fundamental issues to potentially be considered later.

### *Stakeholders and consultation*

4. Public consultation on a range of issues was undertaken from February to May 2019. Targeted engagement during 2021 with government agencies, the Charities Registration Board, and key stakeholders such as iwi and sector representatives informed the development of policy options for practical improvements to the Charities Act. Stakeholders were particularly supportive of the improved appeals framework and the reduced reporting requirements for smaller charities.
5. The proposals being announced address many, but not all, of the issues canvassed in the review commissioned by Cabinet in 2018. The Charities Act Amendment Bill will mark the completion of a significant phase of work, making practical improvements to resolve many of the issues raised in 2019.
6. The 2019 New Zealand Law Foundation International Research Fellowship Te Karahipi Rangahau a Taiao was awarded to Sue Barker to answer the question "What does a world-leading framework of charities law look like?". The research was undertaken in parallel with your work to modernise the Charities Act. The final report was released on 19 April 2022. The report will likely be part of Sue Barker's submission to the select committee that considers the draft bill and may be endorsed by other stakeholders
7. Many of her recommendations relate to matters out of scope of this stage of the modernisation work. This includes proposals to amend the purposes of the Act, restructure the Charities Registration Board and Charities Services into an independent Crown entity, and introduce new requirements around fundraising standards. There are also several tax related proposals for the Income Tax Act 2007 and Tax Administration Act 1994.

8. The primary recommendation is to transfer the Government's work on the Act to Te Aka Matua o te Ture, the Law Commission, for an independent first principles review. The report proposes that this review consider the definition of charitable purpose, adopting Australian charities' advocacy law, government contracting arrangements with not-for-profits and other wide-ranging matters.

### ***Impact of the work for the sector***

9. In February 2022 Cabinet agreed to policy changes to modernise the Charities Act in five areas – reporting requirements for very small charities, regulatory decision-making and judicial appeals, governance and officers of charities, compliance and enforcement powers, and charities accumulating funds. These changes will have several benefits for charities and the public:
  - 9.1 Empowering the regulator to exempt very small charities from the financial reporting standards will **reduce the compliance burden** for these mostly volunteer-run organisations, supporting them to focus on their important mahi (while still providing public transparency from the requirement to provide basic financial information);
  - 9.1 Improving the process for charities to object to decisions that affect them, and requiring the regulator to publish decisions and consult with the sector on guidance, will **improve transparency, fairness and accountability of regulatory decision-making** and promote confidence in the regulatory system;
  - 9.2 Empowering the Taxation Review Authority, a tribunal, to hear first appeals under the Charities Act will **improve access to justice for charities** by reducing the costs and formalities associated with the courts;
  - 9.3 Clarifying who officers of charities are and what their role is, and requiring charities to review their rules annually, will help to **improve the governance of charities**, giving the public more confidence that their donations are being used effectively. This is also supported by changes enhancing the regulator's compliance and enforcement tools, as it will mean problem behaviour in charities can be more easily addressed; and
  - 9.4 Requiring large charities to report the reasons for their accumulated funds will **improve transparency for funders and the public**, which may encourage more support for charities.

### **Next steps and timing**

10. The amendment bill is currently being drafted by Parliamentary Counsel Office (PCO) and the Department. When the bill is finalised, it will be considered by Cabinet Legislation Committee and then introduced into the House for consideration.

11. Non-legislative changes are already being worked on by the Department with some likely to be ready to implement before the Bill is passed. More information on this will be available for the sector to ensure they are aware of future implementation dates in due course. The Ministry of Justice has advised it will require 6-12 months to implement the changes enabling the Taxation Review Authority to hear charities appeals after the Bill is passed.

**Hon Priyanca Radhakrishnan**  
**Minister for the Community**  
**and Voluntary Sector**

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## **Appendix A: Talking points and questions and answers**

### **General: about the sector and work programme**

#### **Cabinet has approved policy proposals for work to modernise the Charities Act**

- In 2018, Cabinet agreed to a review of the Charities Act with the aim of modernising the Act. Public consultation occurred in 2019 on a range of issues, however, work was put on hold due to COVID-19 and resumed in late 2020. In February 2022, Cabinet approved the policy proposals.
- I expect to introduce the Charities Amendment Bill to Parliament this year with the aim of passing the Bill in 2023. The public will have an opportunity to provide feedback through the Select Committee process.

#### **The charitable sector is diverse and makes a great contribution to New Zealand society**

- The sector is diverse and includes sports clubs, churches, providers of education, and social services. There are about 28,000 registered charities in New Zealand.
- Over half of charities in New Zealand are small and often volunteer run.
- Charities benefit communities by providing services that respond to community need. This was demonstrated during the COVID-19 pandemic when charities provided support such as food parcels and emergency accommodation.
- Charities spent over \$19 billion over the last financial year.

#### **Significant changes since the Charities Act's commencement in 2005 prompted the Modernising the Charities Act work programme**

- The Charities Commission was disestablished in 2012 and its functions were transferred to the Charities Registration Board and the Chief Executive of the Department of Internal Affairs, delegated to Charities Services (the charities regulator). From 2015, charities were required to report to financial reporting standards specified by the External Reporting Board.

#### **The objective of the work programme is to deliver real world benefits to charities**

- The aim of the Modernising the Charities Act work is to support charities to continue contributing to community wellbeing while ensuring public transparency. I am making practical improvements to address challenges charities face. These challenges include the compliance burden, inaccessibility of the current appeals framework, and lack of clarity of the role of charities' officers.
- The Government considers the fundamentals of the Charities Act (which is a registration, reporting and monitoring system for charities) to be sound.

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## Potential questions: General

### *What will change for charities in practice?*

The changes will have practical benefits for charities and the communities they serve. Some changes are operational and will be implemented over the coming year, while other changes require amendments to the Charities Act.

I am reducing the burden of financial reporting for our smallest charities, which means more time focusing on their important mahi. Large charities will now share why they have accumulated funds, giving more context to how their financial position contributes to the goals of the charity and its community.

All charities will have a better idea of how the regulator makes decisions affecting them, be more involved in regulatory decision-making, and not have to go to the High Court to challenge a decision, which will save time and money.

### *How can people have a say or make a submission on the proposals?*

As part of the legislative process, there will be an opportunity for anyone to make submissions during the Select Committee stage.

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## Potential questions: Fundamental matters out of scope

### *What happened with all the other issues raised in the 2019 public consultation?*

The changes I have proposed will make practical improvements. I was keen to focus on these areas to make a difference to how charities operate in the short to medium term.

Other more fundamental matters raised in the public consultation, like how te ao Māori principles could be considered in the Act, where the line is for political advocacy by charities, and the definition of charitable purpose could be considered at a later stage.

### *Why didn't you look at advocacy by charities?*

I have focused on practical improvements for charities. More fundamental issues like advocacy by charities could be considered at a later stage. This approach allows us to make it easier for charities to operate sooner.

### *Will the changes affect the 'four heads of charity' (Charitable purpose)?*

No, this work did not consider the definition of charitable purpose. The four heads of charity (relief of poverty, advancement of education and religion, and any other purposes beneficial to the community) have not changed.

### *Did you consider the business activities of charities in this work?*

Business activity is a well-established way for charities to raise funds. I considered matters relevant to charitable businesses, like accumulation of funds and governance. Deciding whether business should be charitable wasn't something I considered as part of this review as it links to more fundamental issues such as charitable purpose.

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## Decision-making and appeals

### Improving the accessibility of appeals and expanding the decisions available for appeal

- Currently many charities, particularly smaller ones, find the High Court appeal process to be inaccessible due to the legal complexity and costs involved.
- Charities will be able to use the Taxation Review Authority to hear appeals under the Charities Act. The Authority will provide greater accessibility and the updated appeals framework will allow charities to self-represent, reducing costs.
- I am also expanding the range of decisions that can be appealed. This change will include significant decisions of the Chief Executive of Internal Affairs.



- Further, I am extending the timeframe for lodging an appeal to two months making it easier for small charities that might not meet frequently.

### **Increasing the regulator's transparency, accountability, and decision-making processes**

- I am requiring the charities regulator to publish all decline and deregistration decisions and provide a clear process for charities to object to significant decisions.
- Additionally, I am extending the timeframe for submitting information to the regulator from 20 working days to two months, increasing the Charities Registration Board's composition from three to five members, and requiring the Department of Internal Affairs to consult with the charities sector about guidance material.
- Increasing the number of Board members to five will improve the diversity of the Board and address potential quorum and conflict of interest issues.
- These changes acknowledge that many charities are volunteer run and need time to engage in the decision-making process. These changes also support participation in the charities system, provide greater clarity, and allow charities to focus on their important mahi.

### **Potential questions: decision-making and appeals**

#### ***Why aren't you re-establishing the Charities Commission?***

Officials heard in consultation that some parts of the sector would have more trust in the regulator if it was an independent Crown entity.

I am confident with the independent Charities Registration Board and Charities Services within the Department of Internal Affairs making decisions under the Act. However, I am proposing to enhance the regulator's transparency, accountability, and decision-making processes.

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### **Accumulation of funds**

#### **Requiring larger charities to report reasons for accumulated funds**

- Larger charities (tiers 1, 2 and 3) will be required to report the reasons for their accumulated funds, to provide clarity on why funds are held to help improve public trust and confidence.
- Charities Services will co-design with iwi changes to the annual return form so that te ao Māori views of accumulation are reflected.

### **Potential questions: accumulation of funds**

#### ***Do you think accumulation of funds by charities is problematic?***

Accumulation of funds demonstrates the charity is growing its resources. Some charities accumulate significant amounts of funds which is often necessary for future investment. I do not consider accumulation of funds problematic unless the funds are not used for charitable purpose, which could constitute serious wrongdoing leading to the charity being deregistered.

What can be problematic is that it is not always clear why charities are accumulating funds. Requiring an explanation in the annual return will address this and it will be up to users such as donors and Inland Revenue to draw their own conclusions.

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## Financial reporting requirements for small charities

### Easing reporting requirements for very small charities

- Currently, very small charities have disproportionate reporting requirements relative to the level of transparency and accountability required.
- I am proposing to exempt very small charities from the External Reporting Board's financial reporting standards. Very small charities will still be required to file an annual return containing basic financial information.
- This will balance transparent reporting while reducing the compliance burden faced by very small charities. Around 12 percent of all registered charities will benefit from this exemption. The exemption threshold will be set through regulations.

### Potential questions: financial reporting for small charities

#### *How will you maintain public trust and confidence in small charities if they don't have to report as much information?*

Very small charities that are covered by the exemption will still be required to file an annual return containing basic financial information. This will provide enough transparency relative to the risk these charities pose.

#### *How does this link to External Reporting Board's review of tier 3 and 4 reporting standards?*

I am enabling the Chief Executive of the Department of Internal Affairs to exempt a class of small charities from the tier 4 reporting standard. The Chief Executive will not use the exemption if the External Reporting Board's work aligns with my intent to reduce reporting requirements for small charities.

#### *How many very small charities will benefit from the exemption from the accounting standard?*

The financial threshold for exemption will be set in regulations and developed through consultation. Based on targeted consultation, officials suggested reducing reporting requirements for tier 4 charities with annual payments under \$10,000 and total assets under \$30,000. Around 12 per cent of all registered charities which are very small charities will benefit from the exemption.

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## Officers of charities and governance

### Changes will be made to the governance of charities

- I am amending the definition of officer to include anyone with significant influence regardless of the type of charity and clarifying the role of an officer as someone who supports the charity to meet its obligations and holds responsibility for governing the charity.

- Charities will need to review their rules document every year to encourage a closer look at their governance arrangements.
- I am updating the disqualifying factors for becoming an officer to include financing of terrorism offences and one officer in a charity must be 18 or over (people can currently hold officer positions from the age of 16).
- These four changes will improve the accountability and governance of charities and produce better alignment with other legislation that charities might be governed by such as the Companies Act and Trusts Act.

## Potential questions: officers of charities and governance

### *How do I know if I have significant influence over a charity?*

Significant influence is already used in the Charities Act. If you are involved in the decisions about the management of the charity, or the use of funds, you are likely to have significant influence and be counted as an officer. You will also be an officer if you are a trustee or a trust, or a member of the board or governing body of your charity.

It is important that the right people are included as officers to provide surety over the governance of the charity. An officer role will usually involve a high level of financial and legal responsibility to make sure that the public's funds are being used towards the charitable purpose. People can still be involved in a charity without holding an officer position, if that is what they want.

### *What will it mean to review the rules document?*

The review of the rules document is a way to encourage charities to regularly consider its governance arrangements. It may include making sure the charity's processes are up to date. For example, the charity may check that its funds and activities are still achieving its charitable purpose and check that any conflicts of interest are up to date.

### *Why have you not included other serious offences as disqualifying factors?*

Officials heard that some people want more serious offences to be included as disqualifying factors for officers. However, there was strong feedback that charities are best placed to decide who should be involved in the charity as they know the people, the kaupapa, and the community best.

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## Compliance and Enforcement

### Improving the compliance and enforcement function

- I am making explicit the currently implicit obligations for charities to remain qualified for registration.
- The definition of serious wrongdoing will be clarified to include an offence punishable by at least two years imprisonment.
- I am enabling the Charities Registration Board to disqualify an officer for serious wrongdoing or a significant/persistent breach of obligations, *without* deregistering the charity.

## Potential questions: compliance and enforcement

### *Will this mean more charities can be caught for serious wrongdoing?*

The change to the definition of serious wrongdoing is a small change that is unlikely to lead to more charities being caught engaging in serious wrongdoing. Rather, the change is intended to capture a more consistent level of serious poor behaviour.

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**Appendix B: Summary of policy decisions, benefits, options considered and stakeholder views**

Decision	Benefits and policy rationale	Other options considered but not taken forward	Summary of stakeholder feedback
<b>Decision-making and appeals consistent with best practice advice including:</b>			
Establish appeals to first be heard (as a rehearing) by an amended Taxation Review Authority	<p>The changes to decision-making and appeals are consistent with best practice regulatory guidance, the Legislation Design and Advisory Committee and Ministry of Justice advice. The changes will increase transparency and trust and confidence in the regulator.</p> <p>Best practice is that if appeals are to be heard in the courts, specialist courts are more appropriate for first appeals from decision-makers in narrow fields. Courts of general jurisdiction (District Court and High Court) are more appropriate for second appeals following the specialist courts.</p>	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Alternative appeals body prior to the High Court (District Court or Appeals panel)</li> <li>• Change the Charities Registration Board to an appeals body. This would disestablish the Board and give all decision-making powers under the Charities Act to Charities Services</li> <li>• Best practice decision-making with test case litigation fund</li> <li>• Broader objection and appeal rights / rules (all decisions under the Charities Act can be appealed, and hearings can be heard <i>de novo</i>. This provides for a new decision-maker to assess the decision afresh, without taking into the decision that the Board or Charities Services came to.)</li> </ul>	Stakeholders were overall supportive of a more accessible appeals body. Ms Barker said it was important to be able to go straight to the High Court to challenge a decision, because only two rights of appeal are available, and a tribunal would limit the ability to go to the Supreme Court. This stakeholder also said it was necessary to provide for <i>de novo</i> hearings. A <i>de novo</i> hearing provides for a new hearing without consideration of the Board or Charities Services decision or a legal basis to argue against. <i>De novo</i> hearings provide for a new decision-maker to assess the matter afresh, without taking into consideration the decision that the Charities Registration Board or Charities Services came to. This typically allows for new evidence to be presented. We did not recommend <i>de novo</i> hearings for charities appeals. <i>De novo</i> hearings are expensive and time consuming for all parties. The appeals body can also currently consider new evidence if it sees fit.
Expand the decisions that can be appealed to include all Board decisions and Charities Services' decisions that could have a significant impact on the entity	The decisions that can now be appealed are the decisions that could have a significant impact on the rights or interest of a person or entity.		Some stakeholders including Ms Barker consider that all decisions are currently able to be appealed, and therefore by not allowing all decisions to be appealed is limiting existing appeal rights. Based on legal advice, LDAC guidance and MoJ advice we do not agree that all decisions under the Act can currently be appealed.
Expand the objections process and provide the opportunity for entities to speak to the decision-maker	Expanding the objections process will improve decision-making and trust and confidence in the regulator. Best practice requires that a fair practice is followed, to give effect to natural justice. This means ensuring that the person affected by the decision is involved in the decision-making process by giving the opportunity to provide all relevant information and, where relevant, to comment before the decision is made		Most stakeholders were supportive of expanding the objections process, but some did not see the value in submitting or speaking to a decision-maker that they did not have trust and confidence in (they considered the appeals mechanism more important).
Require the regulator to publish decisions and clarify regulatory decision-making policy and procedures	Guidance on regulatory best practice recommends that regulators are transparent about their decisions and what process was undertaken in reaching their decisions. The guidance recommends that regulators publish and maintain up-to-date information on their decision-making processes, including timelines and principles that inform the decisions.		Supportive, but some (including Ms Barker) commented that independent, transparent, and accountable decision-making can only be achieved by establishing a Crown entity.
Expand the Charities Registration Board membership from three to five members	Expanding the Charities Registration Board membership will increase diversity and representation on the Board; helps to address quorum and conflict of interest issues; and increases capacity to take on more decisions		
Increase the timeframe for entities to provide additional information for an application, object to a decision, or lodge an appeal to two months	Increasing the timeframe for charities to provide information to two months is a practical extension that recognises the resourcing constraints of small charities.		Likely supportive, but some may consider two months is still too short – one stakeholder proposed a minimum of 60 days. We did not consult on this proposal specifically. Ms Barker recommended a 60-day timeframe, in line with Australia. Cabinet has agreed to extend the timeframe to two months, which is equal to approximately 60 days.
Require Charities Services to consult with the sector on significant draft guidance material	Requiring Charities Services to consult with the sector on significant guidance will ensure that the material is in a form that works for the sector.		Supportive, and we heard many calls for further guidance, education, and support material.
Review the Department's performance measures relating to Charities Services to ensure they are fit for purpose	We have heard from the sector that Charities Services should report like a Crown Entity. We do not consider this necessary given that there are existing accountability requirements that could be strengthened. It would also be inconsistent with reporting expected of other regulators that sit within government departments, and that such reporting will divert resources away from Charities Services' education and support role. However, we do think it is important that the performance measures are fit for purpose.		Some stakeholders, including Ms Barker, did not consider that this would go far enough to improve the accountability of the regulator, commenting that this would only be achieved by establishing a Crown entity.



Decision	Benefits and policy rationale	Other options considered but not taken forward	Summary of stakeholder feedback
<b>Accumulation of funds</b>			
<p>Require tier 1-3 charities to report the reasons for their accumulated funds in their annual return (partner with iwi to design changes to the annual return form)</p>	<p>Information on why charities have accumulated funds is not easily accessible, which does not promote public trust and confidence in the charitable sector. This decision addresses the problem, by providing charities the opportunity to succinctly and clearly explain why they have accumulated funds for the previous year in a way that is accessible to users of that information. It is a low-cost, non-legislative change that would have minimal additional compliance burden on large charities. It also aims to reflect a te ao Māori perspective of accumulation, by partnering with iwi on designing the reporting changes.</p>	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Guidance from Charities Services on legislative funds</li> <li>• Require larger charities to prepare distribution plan / policy (Act change)</li> <li>• Require larger charities to distribute a minimum of five per cent of net assets per annum (Act change)</li> </ul> <p>During consultation, some submitters proposed alternative options to consider, but we did not explore them further because they would not address the problem or were considered as part of the work on officers and governance of charities. These suggested options were:</p> <ul style="list-style-type: none"> <li>• Educating the public on why accumulated funds are necessary</li> <li>• Requiring charities to have a ‘reserves’ policy</li> <li>• Providing guidance to charities on the importance of maintaining reserves</li> <li>• Establishing purpose-based governance requirements, for example introducing a new officer duty to act in the best interest of charitable purpose.</li> </ul>	<p>Supportive, but some thought additional reporting was unnecessary given current reporting requirements. Iwi considered they should be exempt given their unique position. Ms Barker suggested a public awareness campaign to restore confidence in charities running businesses and accumulating funds.</p>
<b>Financial reporting requirements for small charities</b>			
<p>Reduce reporting requirements for very small charities through a power to exempt very small charities from the External Reporting Board standards</p>	<p>Reporting helps show whether charities are spending money appropriately, but the current reporting obligations may be disproportionate to the level of transparency and accountability needed from small charities. Compliance rates for small charities are trending downwards, and stakeholders have told us that small charities find the standard too onerous to comply with. Exempting a subset of tier 4 charities from XRB’s reporting standard will best address the problem and meet the objectives of this work. These charities would still be accountable through annual returns reporting some basic financial information. The level of reporting is proportionate to the level of transparency and accountability needed. The proposed threshold is for tier four charities that have annual payments under \$10,000 and total assets under \$30,000. This will be determined in regulations, in consultation with the sector.</p>	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Simplify the current reporting templates</li> <li>• Extra support and education to help small charities meet the reporting requirements</li> <li>• Advisory committee to input into template and guidance design for reporting requirements</li> </ul>	<p>Supportive, but some commented that the proposed threshold is not high enough. Ms Barker suggested that, as part of an independent first principles review, the financial reporting requirements for charities are comprehensively reviewed, incorporating multi-disciplinary expertise, including in standard-setting, accounting, auditing, information technology, data, tikanga, trust law, as well as coalface experience of charities, to ensure a balance is struck between visibility and accountability on the one hand, and not undermining small charities’ ability to deliver on their charitable purposes on the other. She also suggested that the review of the financial reporting requirements include the design of an online financial reporting tool for charities. Charities Services already provide to help charities with their reporting requirements. An online financial reporting tool may have further benefits but would require funding.</p>
<b>Obligations of charities and officers</b>			
<p>Expand the definition of officer to include everyone who has significant influence over the charity</p>	<p>Officers should be anyone that contributes to the strategic direction and decision-making of a charity. This would include any trustees if the entity were a trust, any member of a board or governing body, or any other person with significant influence over the management or administration of the entity. This decision captures anyone with significant influence, regardless of the how the entity is organised. The definition will now capture persons such as treasurers of trusts who are not trustees and cultural advisors that are not a member of the governing body. It will also reflect how we understand the definition is interpreted in practice.</p> <p>The current definition has been an issue for Charities Services in some investigations where the investigated person had a significant role or influence in the charity but was not considered an officer and therefore did not have the accountability that comes with the officer title.</p>	<ul style="list-style-type: none"> <li>• Status quo</li> </ul>	<p>Some stakeholders had concerns that people would be discouraged from being involved in a charity if they had to become an officer. Ms Barker suggested that the term “responsible person” is used instead of the term “officer”, and that the definition clearly limits its scope to members of the charity’s governing body (extended to include the directors of a corporate trustee). The policy intent is to capture people who contribute to the direction or decision-making of a charity, regardless of how the charity has organised its governance structure.</p>



Decision	Benefits and policy rationale	Other options considered but not taken forward	Summary of stakeholder feedback
Require at least one officer to be at least 18 years old	The proposal addresses the legislative inconsistency between the Charities Act, Trusts Act, and Companies Act for the minimum age requirement of an officer or similar role by requiring at least one officer of a charity to be at least 18 years old. Age is regarded as a proxy for maturity, so this proposal will increase the accountability of charities by having an officer who is at least 18 years old. This proposal balances the need to provide for accountability but continues to support youth (16- or 17-year-olds) to be involved in charities as officers.	<ul style="list-style-type: none"> <li>• Status quo: disqualifying age to be an officer remains at under 16</li> <li>• All officers in a charity must be 18 or older</li> </ul>	Mixed views – some raised concerns about the proposal limiting youth from getting involved in charitable work, and other questioned its relationship with Acts that require people to be 18 or older to hold governance roles.
Make financing of terrorism offences a disqualifying factor for officers	The Act is light touch for disqualifying factors, focused on preventing charities from appointing officers that have a history of dishonesty (such as theft or fraud) to ensure the funds and assets are only used to advance the charitable purpose. This maintains sector independence by allowing the charity the autonomy to decide who can be an officer except when it comes to dishonesty matters. The Financial Action Task Force (FATF), which sets and monitors international standards that aim to prevent illegal activities, has recommended legislation incorporate anti-money laundering and countering financing of terrorism policies.	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Include serious criminal offences as disqualifying factors (fraud, manslaughter, murder, physical violence, serious drug offences and sexual violation).</li> <li>• All criminal convictions are disclosed to the regulator who has the discretion to disqualify an officer when there is a significant risk to the charity or its beneficiaries</li> </ul>	Supportive – some suggested the Act should include more serious criminal convictions as disqualifying factors, others considered that charities are best-placed to determine who can be an officer.
Clarify that the role of officers is to support the charity to meet its obligations  Charities Services to provide more education, training and guidance for officers	The role of officers is unclear in the Act. Clarifying the role addresses any ambiguity and helps to emphasise the governance role officers have in a charity.	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Additional guidance re: governing charities</li> <li>• Add four duties on officers into the Charities Act, supported by guidance</li> </ul>	Likely supportive, as stakeholders told us there is a lack of understanding about the role of an officer. However, we did not consult on this proposal specifically.
Require charities to review their rules document annually  Charities Services to issues model rules under section 10 of the current Act	Requiring charities to review the rules document annually encourages charities to think about the governance and operation of the charity more frequently, which will likely increase the standard of governance in the sector.		Unsure as this is a new proposal that has not been consulted on. It is possible that this will be an additional compliance burden for some charities. Ms Barker suggested that the charities legislation should articulate one simple overarching fiduciary duty, applicable to all registered charities irrespective of underlying legal structure, and to all involved in governing them, to act in good faith to further the entity's stated charitable purposes in accordance with its rules. We consider this is out of scope for this review.
<b>Compliance and enforcement</b>			
Make more explicit all the key, ongoing obligations under the Act  Undertake a post-implementation review of operational practice on the use of compliance and enforcement tools	While some obligations are explicit (for example, obligation to file annually), others appear to be more implicit, such as the need to maintain charitable purpose, to have a rules document, and to have qualified officers for the entity to remain qualified for registration. The Act cannot support and encourage charities to continue their contribution without the Act being clear about what is expected of them.  A post implementation review of operational practice would help ensure the regulator is able to use tools to their full potential, when appropriate. In turn, this would help the contribution that compliance and enforcement make to the trust in registered charities and the functioning of the registration and reporting regime.	<ul style="list-style-type: none"> <li>• Status quo</li> <li>• Add four duties on officers into the Charities Act, supported by guidance</li> <li>• Reframed compliance and enforcement model informed by the Australian system</li> </ul>	Unsure as this is a new proposal that has not been consulted on. This proposal could pick up on the questioning by some stakeholders of why existing powers have not been used.
Amend the definition of 'serious wrongdoing' to express a more consistent level of serious behaviour	The workability of 'serious wrongdoing' is crucial, as it is one of the three behaviours targeted by compliance and enforcement. Some of the 'serious wrongdoing' behaviour is primarily dealt with through other law (for example, criminal law for an offence). The conduct is then only regulated to a certain extent in the context of a charities registration and reporting system (that is, the conduct that constitutes an offence is captured by 'serious wrongdoing', which could lead to deregistration). The current definition does not provide a consistent level of seriousness. This lack of consistency means it may be difficult for charities, and the regulator, to be clear about the behaviour that is regulated.		The Charities Registration Board and Charities Services are supportive of improving the workability of serious wrongdoing, but this decision was not specifically consulted on. There was support in previous consultation about clarifying the definition of serious wrongdoing.



Decision	Benefits and policy rationale	Other options considered but not taken forward	Summary of stakeholder feedback
<p>Establish a new power for the Board to disqualify an officer for 'serious wrongdoing' or significant/persistent breach of obligations</p>	<p>Currently, the Board can make a time-limited order to disqualify an officer, but only on deregistering a charity. Deregistering a charity can be disruptive when the wrongdoing may be by one officer. With this new power, the Board would only be able to disqualify an officer for serious wrongdoing or significant/persistent breach of obligations. This power contributes to the objective of the Act supporting and encouraging charities to continue their contribution, while ensuring sufficient transparency – in this case, about who is or is no longer involved.</p>		<p>Mixed views on this, some supportive but others (including Ms Barker) were concerned about introducing new powers which would alter the balance of the current Act in the absence of reviewing fundamental issues. Stakeholders also commented that the use of existing powers could be improved.</p>

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