



▶ **Submission to the Charities Act review, Department of Internal Affairs**

▶ **Contact Details**

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▶ **This submission has been prepared by Volunteering New Zealand and is endorsed by the following 18 member organisations:**

ACE Aotearoa
Bellyful
Bishop's Action Foundation
Cystic Fibrosis New Zealand
English Language Partners
Gisborne Volunteer Centre
Multiples New Zealand
NZ Football
Student Volunteer Army Foundation
Surf Life Saving NZ
Toy Library Federation of New Zealand
Volunteer Nelson
Volunteer Wellington
Volunteering Auckland
Volunteering Canterbury
Volunteering Hawke's Bay
Volunteering Waikato
Youthline Auckland Charitable Trust

About Us

Volunteering New Zealand (VNZ) represents the 'voice of volunteering' in Aotearoa and the 1.2 million people who volunteer within our communities.

We are the only national organisation in New Zealand that focuses purely on volunteering and the volunteer workforce that powers New Zealand. We hold the 'big picture' and are in a position to liaise, work with, and advise volunteers, members, community and voluntary organisations, government and business sectors. This helps ensure that volunteering occurs within a positive environment where it is encouraged and fostered.

VNZ promotes volunteering and its value to New Zealand society through advocacy, promotion, and the creation of sector assessment tools like the Best Practice Guidelines and Competencies for Managers of Volunteers.

We are a membership organisation with over 80 national and regional member organisations that involve volunteers in their work programmes. Our member organisations are typically associations or 'peak bodies' that in turn represent a large number of local and regional volunteer-involving organisations.

VNZ is also part of a network of Volunteer Centres throughout New Zealand that in turn offer professional development and capacity building within the community sector. This network is known as the VCNA.

VNZ represents all volunteers who participate in volunteering activities within Aotearoa. Our new strategic plan effective from July 2019 has a new focus to recognise, support and measure the contribution of *Mahi Aroha*. Mahi Aroha is the unpaid activity performed out of caring for others in accordance with the principles of tikanga to maintain mana and rangatiratanga, rather than for financial or personal reward. For many Māori, Mahi Aroha carried out for the benefit of whānau, Hapū and Iwi is often seen as an essential part of fulfilling their cultural obligations to the wider collective. It is also central to their own sense of identity and for maintaining their culture and traditions.

There are more than 1.2 million volunteers who give more than 157 million hours of unpaid labour to the sector in Aotearoa New Zealand. 90 percent of New Zealand voluntary and community sector organisations employ no staff, and rely solely on volunteers.¹

New Zealand has 114,000 voluntary and community sector organisations. Collectively they contributed \$5.96 billion to GDP in 2013, the last year this was calculated. This was 2.7 percent of New Zealand's total GDP. The same year, the value of (formal) volunteering in New Zealand was estimated to be \$3.46 billion. This is on a par with the entire construction industry.² As we measure wellbeing beyond economic growth, volunteering is one of the indicators of wellbeing in Aotearoa New Zealand.

¹ Stats NZ, *Non-Profit Institutions Satellite Account: 2013* (Statistics New Zealand, 2015), 18, 20.

² Ibid. 8.

1. EXECUTIVE SUMMARY

- i. Volunteering New Zealand (VNZ) appreciates the invitation to make a submission to the Department of Internal Affairs (DIA) on the review of the Charities Act 2005. We trust that DIA will give this submission due consideration.
- ii. VNZ welcomes this long-awaited review of the Charities Act 2005.
- iii. This review impacts on VNZ's work directly and that of the entire charitable sector. This is a piece of legislation that impacts on every one of the 27,000 registered charities. However, the legislation can be technical in nature. Much of the sector will not have had the opportunity or the time to engage in the consultation process or to make a written submission.
- iv. It is crucial that charities are supported to effectively deliver on their charitable purpose and that the expertise and independent voice of charities helps inform the policies and services that affect communities.
- v. The legislation that governs charities needs to reflect the modern and diverse nature of the charitable sector and be fit for purpose in twenty-first century Aotearoa New Zealand.
- vi. This submission focuses on the key things that the Charities Act needs to deliver for a robust, supported and impactful voluntary and community sector where volunteering can thrive. These are our recommendations:
 1. Add the following purpose to the Act: 'to support a robust, vibrant, independent, and innovative charitable sector'
 2. Match the regulatory functions under the Act with functions to protect the independence and education of the voluntary and community sector. This would be most effective through an independent crown entity
 3. Advocacy activities of charities carried out in furtherance of their stated charitable purpose to be explicitly protected in the principles of the legislation
 4. The legislation should not add governance standards to its existing framework
 5. Ensure that all of the pieces of legislation that govern the voluntary and community sector, the Charities Act, Incorporated Societies Bill and Trusts Bill, work together to support, rather than hinder, a cohesive, robust and impactful sector
 6. Reduce the reporting requirements on small charities
 7. Charities should have the right to appeal all decisions made under the Act
 8. Carefully consider any changes to the accumulation of funds policies under the Act.

2. A COMPREHENSIVE REVIEW OF THE CHARITIES ACT IS A REAL OPPORTUNITY

- i. The myriad of entities governed by the Charities Act 2005 are diverse in size and scope, in form and function and in purpose and culture. From the newly-formed community soccer team with \$100 in the bank to the big household names. This sector has it all.
- ii. A thread that joins this diversity is that 90% of charities are powered entirely by volunteers. It is bustling with energy and activity in the space where people have seen a need and they have responded.
- iii. New Zealand's definition of charitable purpose is tied to laws formed in the United Kingdom hundreds of years ago. The nature of charity has changed. For many, the term 'charity' does not itself reflect the nature of the work that they do *in partnership*, and *as part of*, communities, as opposed to the traditional model of doing *for* communities. This move away from paternalistic attitudes should be reflected in a change or expansion to the definition of charitable purpose.

- a. The current definition of charity is embedded within a Western worldview inseparable from the history of colonisation.
- b. An expanded definition would benefit from incorporating tikanga Maori concepts, particularly manaakitanga, whanaungtanga and kaitiakitanga. Though the term mahi aroha is close to the Western concept of voluntary work, tikanga emphasises a strong sense of duty and reciprocity; collective, intergenerational wellbeing; and a blending of family and community.
- c. This is an important context because the need to grow, support and defend this activity should be at the centre of any legislation that governs it.
- iv. VNZ notes that the review is orientated around technical or legal questions that do not address either the average user experience for charities nor the substantial questions of structure, scope and purpose of the legislation.
- v. Innovations in the ways in which charities currently operate, and are structured and governed, could be better supported by the legislation.
 - a. For example, as soon as a group starts some community action and wants to open a bank account they have to register as an entity, even if they are not yet sure what kind of entity, if any, may suit them best into the future.
 - b. More flexibility to transition between types of entity would be welcomed. VNZ suggests an incubator model to house new groups with a charitable purpose for a year or two while they explore whether they join another entity, become their own entity and work out what type of entity suits them best.
- vi. The Incorporated Societies Bill, the Trusts Bill and the Charities Act should work seamlessly together as a package of legislation. A first principles review of the Charities Act that draws on the expertise of the Law Commission would be welcomed by VNZ.
 - a. There are broader questions about whether the available entity options for charitable organisations are still fit for purpose.

3. CLARIFY THE PURPOSE OF THE CHARITIES ACT

- i. **Recommendation 1:** Add to the purpose of the Act: ‘Support a robust, vibrant, independent, and innovative charitable sector’
 - a. A robust, vibrant, independent and innovative charitable sector is vital for our country’s economy and social fabric.
 - b. This purpose is a clear statement of intent missing from the current Charities Act
 - c. This wording paraphrases one of the objects of the equivalent Australian law, which VNZ considers to be a model charities regime.³
- ii. We do not support the addition of the following purpose: ‘To promote the transparency of the charities sector to donors, volunteers, beneficiaries and the public’. In VNZ’s opinion, this would not add anything except an additional layer of bureaucracy to the existing similar purpose (‘to promote public trust and confidence in the charities sector’)
- iii. **Recommendation 2:** Match the regulatory functions under the Charities Act with functions to protect the independence and education of the voluntary and community sector.
 - a. This would be most effective through an Independent Crown Entity in the form of a Charities Commission as was previously set up under the Charities Act 2005, rather

³ Australian Charities and Not-for-profits Commission Act 2012 (Cth) s 15-5(1)(b)
<<https://www.legislation.gov.au/Details/C2012A00168>>

than the current set up where the regulator is housed within a government department.

- b. An Advisory Board should be established to advise Government on policy.

4. PROTECT ADVOCACY ACTIVITIES TOWARDS CHARITABLE PURPOSES UNDER THE CHARITIES ACT LEGISLATION

- i. **Recommendation 3:** Advocacy activities of charities carried out in furtherance of their stated charitable purpose to be explicitly protected in the principles of the legislation.
 - a. The right to advocate should be a fundamental pillar of the Charities Act.
 - i. The lack of clarity on this issue, the de-registrations that have taken place under the Act in the name of advocacy, and the lack of a right of appeal for charities is highly concerning.
 - ii. The way that the current legislation is being interpreted means that some larger charities are able to undertake advocacy as long as they also have other charitable functions, but small organisations whose primary purpose is charitable advocacy are at risk of their registration being declined or being deregistered.
 - b. The Human Rights Act 1993 and the Bill of Rights Act already provide a legislative framework that should be the guide to ensure that advocacy protects the rights of all people to be free from discrimination.
 - i. The Bill of Rights Act requires the government and anyone carrying out a public function to observe these rights, and to justify any limits placed on them.
 - c. VNZ notes that the manifestos of both the Labour and the Green Party state that in a truly independent community sector, charities could and should engage in advocacy without fear of losing their charitable status.
 - d. VNZ notes that both Australian law⁴ and a recent Canadian court decision⁵ have favoured protections for charities wishing to conduct advocacy.
 - i. Australia has also specifically legislated to make it clear that charities are not prevented from advocating against government policy (see the Not-for-profit Sector Freedom to Advocate Act 2013). Australia has also legislated to make it clear that promoting or opposing a political party or a candidate for political office is a disqualifying purpose.

⁴ Not-for-profit Sector Freedom to Advocate Act 2013 (Australia)
<<https://www.legislation.gov.au/Details/C2013A00056>>

⁵Canada Without Poverty v. AG Canada, 2018 ONSC 4147 (2018)
<https://www.globalphilanthropy.ca/images/uploads/Canada_Without_Poverty_v._Attorney_General_of_Canada.pdf>

5. DO NOT OVERLAY ADDITIONAL GOVERNANCE STANDARDS WITHIN THE CURRENT LEGISLATIVE FRAMEWORK

- i. **Recommendation 4:** Within the current framework we do not feel that it is necessary to overlay Governance Standards above the existing duties that exist in common law and statute.
 - a. This is because additional governance regulation could be confusing and increase the compliance burden.
 - b. We also note that most Charities in New Zealand are structured as charitable trusts, Incorporated Societies or companies, and therefore are already governed by a compliance framework.
 - c. There is also currently legislative reform in progress (Trust Bill and Incorporated Societies Bill) which will further clarify and codify governance responsibilities of trustees of charities and officers of Incorporated Societies.
- ii. **Recommendation 5:** Ensure that any amendments or reforms to the Charities Act works cohesively with all other pieces of legislation that govern the voluntary and community sector – the Charities Act, Incorporated Societies Bill and Trusts Bill – work together to support, rather than hinder, a cohesive, robust and impactful sector.
- iii. Recommendations 4 and 5 are made based on the terms of reference of this review. However, should the terms of reference be widened to include a first principles review we would recommend a shift in focus from entity registration to regulating behaviour through a set of governance standards.
 - a. We believe that a focus on Governance standards rather than entity and governance entity structures could facilitate a shift in focus that would better support new, emergent and divergent entities into the future.
 - b. An environment that promotes general governance standards that set out high-level principles, instead of precise rules and registration regime, would provide more flexibility in terms of how entities can operate, especially in the start-up or transitional phases.
 - c. In this context, we would be supportive of the introduction of Governance Standards for charities similar to those in Australia, where charities must meet core, minimum governance standards that require charities to remain charitable, operate lawfully, and be run in an accountable and responsible way.
- iv. Currently each of the 27,500 charitable entities must be governed by a group of trustees who may or may not be skilled in this task. The updated legislation should allow for flexibility in governance models.
 - a. In March 2019 a hui on governance was co-hosted in Wellington by Rata Foundation and the Centre for Social Impact. Funders, local government, researchers and NGOs gathered to discuss governance issues across the charitable sector, described as patchy at best.
 - b. There is a desperate need for governance training and resources. But much of the feedback at the hui was a need to rethink the governance model itself.
 - c. Between 2006 and 2013 the number of hours that people volunteered declined by 42 per cent.⁶
 - d. The volunteer workforce to cover the 27,500 charitable entities (putting aside other NGOs for a moment) is at least 165,000 people at 6 people per board. Many people will be on multiple boards. This volunteer labour is not guaranteed and often poorly supported.

⁶ Stats NZ, *Non-Profit Institutions Satellite Account: 2013* (Statistics New Zealand, 2015), 20.

- e. Empowering communities to solve their own problems does not need to always be by committee. We should be facilitating community solutions that are not restricted by a particular structure or model but that comply with governance standards.
- f. It is VNZ's view that, in future, tiny entities may share local governance boards that can ensure individual transparency and accountability at a suitable level. The legislation (Charities Act, Trusts Bill and Incorporated Societies Bill) should be flexible enough to support, rather than hamper, sector innovation.

6. REDUCE THE REPORTING REQUIREMENTS ON SMALL CHARITIES

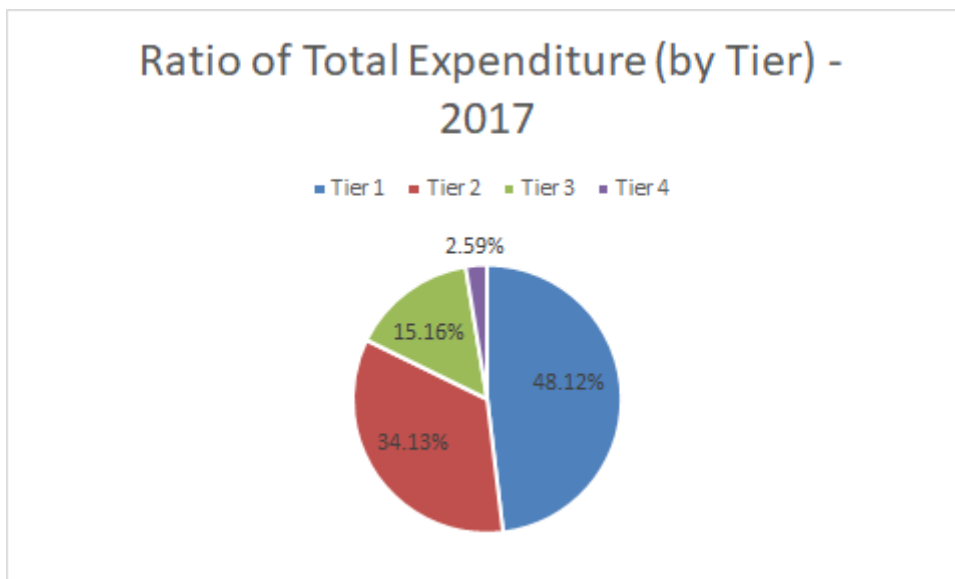
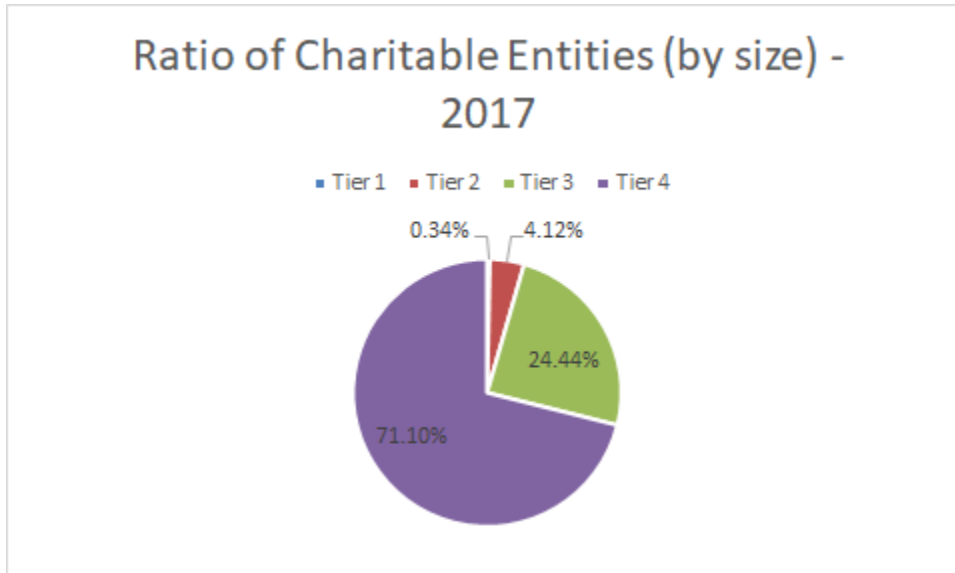
- i. **Recommendation 6:** Reduce the reporting requirements on small charities by raising the threshold of tier 2 to \$5 million, raising the threshold of tier 3 to \$500,000 and reducing the tier 4 (under \$500,000) reporting to an annual online fill-in-the-box financial form and simplified performance report.
 - a. Transparency and accountability across the sector are vital, but the requirements need to be proportionate to the size of organisation.
 - i. The reporting requirements on even the tiniest of charities are in stark contrast to any for-profit company or social enterprise that uses volunteers as part of their work towards social outcomes. They may well use similar fundraising strategies, but have no requirement for transparency and accountability.
 - ii. A significant minority of Tier 4 charities are not currently meeting their reporting obligations (28%).⁷ This means that there is currently less transparency in this part of the sector.
 - b. Volunteer effort is undervalued even though 90% of charities are powered entirely by volunteers, who contribute \$3.5 billion to the economy each year.
 - i. The focus on financial reporting ignores the contribution and impact of the time donated to charities.
 - ii. VNZ would support the development of simple measures to recognise and value the contribution of volunteering in the charitable sector.
 - iii. VNZ agrees with J. McLeod that “the scale of the volunteering component of NFP operations is underestimated and potentially undervalued. Even at the \$22/hr wage rate applied by Statistics New Zealand it is worth 30% more than philanthropy to the sector but more visible effort generally goes into the latter. Without some change, the recent peaking in volunteering seen in most Western countries and an ageing team could signal growing difficulty in attracting this highly valuable ‘free’ help.”⁸
 - c. The vast majority of charities that have been de-registered had not met reporting requirements. Of the over 9,000 charities that have been deregistered since the register began only 6 were removed for serious wrongdoing. The majority (nearly 4,800), were removed because they failed to file their financial returns⁹.
 - i. VNZ is concerned that there is a disproportionate effect on Māori & Pasifika organisations, as demonstrated during the consultation meetings held as part of this review. This is very concerning.
 - ii. The specific needs of Māori and Pasifika charities must be catered for under this legislation.

⁷ Charities Services, *Annual Review 2017/18* (Department of Internal Affairs, 2018), 8.

⁸ John McLeod, *The New Zealand Cause Report: Shape of the Charity Sector* (JBWere, 2017), 5.

⁹ Barker, S. And Henderson, D. *Issues Paper – Review of the Charities Act* (Sue Barker Law, 2019).

- d. Such a large proportion of charities failing in their reporting requirements signals a larger issue that will not be resolved through training. The system is just not designed around the realities of governing small entities.
 - i. In fact, focusing a large part of Charities Services' resources on tier 4 organisations with a low rate of compliance, is focusing on the tier that accounts for less than 3% of the expenditure in this sector, despite making up over 70% of the number of entities (see charts below).¹⁰



- e. Simplifying this process will allow for greater overall transparency of the activities, income and expenditure of the majority of registered charities.

¹⁰ Brayden Smith, "The Future of Financial Reporting," (paper presented at The Charities Law Association of Australia and New Zealand Conference, Wellington, New Zealand, 11-12 April 2019). Brayden Smith is an audit partner at Grant Thornton.

7. EXTEND THE RIGHT TO APPEAL DECISIONS MADE UNDER THE ACT

- i. **Recommendation 7:** Charities should have the right to appeal all decisions made under the Act not just those relating to registration and deregistration.
 - a. One of the unintended consequences of previous changes to the regime included the removal of a charity's right to access an oral hearing of evidence during appeals. This right should be restored.

8. CAREFULLY CONSIDER ANY CHANGES TO ACCUMULATION OF FUNDS POLICIES

- i. **Recommendation 8:** Any rules around accumulation of funds should be carefully considered for the impact they would have across the entire sector.
 - a. Any changes to rules governing the building of reserves should also be attentive to the fact that New Zealand has entities with their own unique characteristics.
 - i. Post Settlement Governance Entities (PSGEs) are examples of complex legal entities comprised of both businesses and smaller charities. PSGEs have a dual mandate. On the one hand, they must deliver ongoing benefits to their members. On the other hand, they must manage the fixed amount of money arrived at through the settlement process, taking an extremely long-term view. Tainui, for instance, puts a 500-year framework on their investment strategy.
 - ii. This tikanga or kaitiakitanga perspective does not sit easily alongside laws designed to govern traditional businesses or charities so any additional regulation should be approached with caution.
 - b. The fundamental test regarding charitable purpose remains with the eventual expenditure of funds, not with the means in which those funds are raised or accumulated.

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