

Date: May 2019

RE: Submission – Review of Charities Act 2005 & Non-Government Organisations (NGOs)

Introduction

1. The Council for International Development (CID) would like to thank the Department of Internal Affairs (DIA) for the opportunity to provide a written submission. This submission outlines the thoughts and experiences of a number of charities and NGOs involved in international development in response to the DIA discussion document.
2. CID is the national umbrella agency of international development organisations based in Aotearoa New Zealand. CID was formed in 1985 by a number of development NGOs and aid agencies to coordinate some activities and present a single voice on issues of common concern.
3. Today CID represents over 40 members, from small community-based organisations to large international NGOs. CID is governed by a board made up of member organisations, and exists to support effective aid and development programmes with the vision of achieving a sustainable world free from poverty and injustice.
4. CID has been a member of the Charities Services Service User Group (SUG) since 2017, and has had the privilege of engaging and interacting directly within this forum to be part of the early discussions regarding Charities Services' priorities, issues and perspectives, and the impact on charities and other stakeholders.
5. Through the SUG CID has been able to engage in regular and direct external stakeholder engagement, to support the identification of gaps in our knowledge and resources in the charitable sector. CID membership organisations shares a significant level of commonalities with the wider charitable services community, including many of the same concerns. This submission seeks to ensure that the potential impact of current focus of the Charities Act review upon the international development sector is also considered.
6. The aspects of the Charities Act that CID would like to ensure there is a greater risk focus on, and to be further strengthened in any subsequent Act or policy amendments accordingly are further outlined under the following headings;
 - i. Use and notification of Third Party Fundraising,
 - ii. Advocacy,
 - iii. Support for small charities,

- iv. Obligations to manage reserves
- v. Business Activities and definitions,
- vi. Accountability and Capacity of Charities Act agencies, and
- vii. Independence, timing and inclusivity of Charities Act review process,

Use and notification of Third Party Fundraising

7. CID notes that potential obligations regarding the use of Third Party Fundraisers are covered in the DIA discussion documents. While many NGOs and charities resource fundraising internally, for some organisations the full or partial use of Third Party Fundraising is increasingly part of a cost effective and effective multi-year fundraising strategy, including a significant portion CID's membership.
8. There are a number of ways that the donor dollar is used and how decisions made by a charity meet their values systems to efficiency, cost effectiveness and good business practices. It is critical that one fundraising method is not favoured over another. Unless the Act looks to this wider range of views held by the public on how their financial support is managed it is not equitable to just focus on the use of Third Party fundraisers specifically.
9. The environment within which charities undertake fundraising is increasingly challenging. Specific reporting requirements on the use of Third Party Fundraisers may unduly frame public attention upon a legitimate modality of fundraising
10. The use of sector compliance frameworks and best practise guidelines, such as the *CID Code of Conduct*¹, charities are able to self-regulate without undue oversight. Without allowing this self-regulation to explicitly occur, there is a risk in the undermining public trust, and the creation of a more 'competitive' environment where charities use the cost of each other's fundraising as a marketing tool.
11. Due to the good governance frameworks already in place in our sector, the level of disclosure of administrative costs for fundraising, including the use of Third Party Fundraisers is already sufficient. This includes annual reporting which truthfully and transparently discloses all costs incurred in receiving donations, with reference to the availability of full financial report if not already included.

Recommendations:

- 12. That revisions within the Charities Act review need to further ensure that it supports charities to utilise a range of fundraising methodologies.**
- 13. That reporting requirements for charities should not be onerous. Due to existing accountability frameworks, charities and their Boards should be left to self-regulate and make**

¹ The CID Code of conduct is a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations. It serves both as a guide to good practice and as a risk management document. See:
<https://www.cid.org.nz/key-issues/code-of-conduct/>

their own decisions on the degree fundraising methodology detail included in annual reporting.

Advocacy

14. CID notes with some concern what appears to be further legal codification of advocacy activities, as outlined in the DIA discussion documents, due to the Supreme Court 2014 Re Greenpeace. As a consequence of this, a number of charities with advocacy activities have been declined registration or deregistered. There now appears to be a legal distinction between advocacy for charitable mandate, and advocacy being seen as a charitable purpose in itself.
15. Advocacy is an activity, not a purpose. The question with respect to advocacy is whether it is carried out in furtherance of the charity's stated charitable purposes. If it is, then there is no difficulty. That is the law of New Zealand, and it should be applied by Charities Services
16. Many charitable organisations are established to progress their charitable purpose. They may undertake advocacy activities to progress these charitable purposes, many of which have progressed positive societal change. In the international charitable sector, advocacy has been used to progress charitable purposes in alleviating poverty and progressing human rights in aid and development support. The membership of CID is made up of organisations which have clear and expressed charitable purposes and there are some who have utilised advocacy activities are directly linked to their charitable purposes.
17. Both internationally and within New Zealand, advocacy activities linked to charitable purposes from the charitable sector have helped progress protection of the most vulnerable members of society and maintain human rights and dignity. A key aspect of New Zealand's progress in addressing societal issues has been due to the involvement of NGOs and charities progressing their charitable purposes through highly credible research and evidence based advocacy activities.
18. The advocacy undertaken by CID's membership, whether in New Zealand or globally, is done from an evidence based position, and with the aim to progress their charitable purpose.
19. CID shares the concern that, due to Section 5A of the Act, recent case law is limiting and discouraging charities to undertake important advocacy activities due to the potential classification that such activities may not be progressing a charitable purpose. As such, there needs to be clearer definitions within the Act. Furthermore, individual charities, the use of advocacy could be considered relatively incidental to the delivery of an organisations mandated charitable purpose.

Recommendations:

- 20. That there needs to be greater clarification within the Charities Act review for advocacy activities to be recognised as a valid activity toward charitable purposes. The Charities Act review needs to ensure that charities can advocate without fear of loss of charitable status.**
- 21. That charities and NGOs should be able to advocate as part of their charitable purpose with**

confidence, from an evidence-based perspective, on issues or policy that will progress their mandate.

Support for small charities

22. The size of the charitable NGOs that constitute the membership of CID range from large organisations with a significant capacity, to those that may only have two or three paid staff with a lower capacity to respond or report. CID notes within the DIA discussion document reference to additional obligations for annual reporting, financial reporting, and audit and review requirements. These obligations will increasingly compound the capacity issues that small/ 'micro-charities' already face.
23. It is heartening to see that consideration for the tiered reporting standards for charities based on their annual expenditure is covered in the Discussion Document, as well as consideration for a new 'micro-charity' tier. However, many small charities will still struggle to meet reporting requirements.
24. It is the experience of CID, that the ability of a charity to meet reporting requirements is often due to the skill and knowledge of charities staff, increasingly this is due to the overwhelming nature of reporting requirements from a multitude of sources.
25. CID understands that a significant number of charities, over 90%, are trusts or societies. The Charities Act review is not the only revisions currently happening, and small charities are not only required to respond to charities reform but also changes due to the introduction of the Incorporated Societies Bill later in 2019, the Tax Working Group, and the Trusts Bill.

Recommendations:

- 26. That any increases in reporting requirements due to the Charities Act review need to be understood alongside other proposed legislative changes, and consideration needs to be made with how relevant data and information can be better shared between Government agencies.**
- 27. That there needs to be further support for small charities to meet reporting obligations, and consideration could be made for further lifting of thresholds, such as for audit requirements.**

Obligation to manage reserves

28. CID notes within the DIA discussion document comments on the accumulation of funds and other assets by charities, and reference to potential consideration for a minimum disbursement regime. The introduction of such a minimum disbursement regime may have some merit, but it is important for charities to be able to make their own strategic decisions, particularly if such decisions may impact on their own sustainability.
29. A charity may have legitimate reason for building reserves. The need to set aside funds to deal

with both expected and unexpected events is common practice amongst charities within CID membership.

30. Charities need to be empowered to make their own strategic investment decisions. This is particularly important in an environment of increasing requirement for their services at that same time that revenue streams and fundraising opportunities are decreasing.
31. The upcoming reviews of the Trusts Bill and the Incorporated Societies Bill already contains sufficient obligations on charities to manage resources and assets, without a requirement for additional reporting obligations. The role of the Charities Office should not be to manage the business risk of charities, and such explicit mechanisms for control may in fact further undermine public trust in the charities sector.
32. The proposition that the Act be further strengthened to direct charities to spend a minimum amount each year, or to distribute a percentage of their assets to other charitable organisations, potentially constitutes further 'regulatory over-reach' on the part Charity Services.

Recommendations:

- 33. That the review of the Charities Act needs to ensure that charities are not overly restrained in their ability to self-determine the use of their own accumulated reserves**
- 34. That legislative requirements in regards resources should be left to other regulatory bodies such as the Incorporated Societies Bill and the Trusts Bill.**

Business Activities

35. CID notes that within the DIA discussion document, reference is made to the registration and reporting requirements for businesses in relation to charities. The policy requirements for charities operating businesses from which profits are used for charitable purposes has long been a charity sector discussion point.
36. Charities' business operations and subsidiary business make up a significant amount of the annual trading incomes that is applied to charitable purposes. As long as the income from the activity is applied to the charitable purpose of the organisation, the business should be allowed to continue to operate within the charitable status of the charity, including retaining associated tax status, etc.
37. Additionally, for many of the members of CID, there is a lot of interest in funding and investing in social enterprises and to do so without concern for losing their charitable status. It appears that there is currently no reference made to social enterprises in the DIA discussion document, or the Charities Act. It will be important that additional work be included to ensure future support for social enterprises so that their social, environmental and economic outcomes can be increased.

Recommendation:

- 38. That the Charities Act review needs to further consult in regards to any legislative changes that might occur in terms of requirements for unrelated business and home they should report.**

Accountability and Capacity of Charities Act agencies

39. Within New Zealand charities need to be able to appeal all decisions made under the Charities Act, not just those relating to registration or deregistration. A more equitable appeals system – with more suitable timeframes – under the Charities Act also needs to be implemented. There also needs to be greater clarity of any new punitive, search powers or seizure powers.
40. Particularly for smaller NGOs and charities, there is an inordinate financial cost when dealing with a de-registration, and it is concerning to see a lack of consideration even for the retention of charitable status until all appeal decisions have been made.
41. A 20-day timeframe is not sufficient time, particularly for a small charitable organisation to an appeal of a decision under the Charities Act. Furthermore, there needs to be a greater level of accountability for any agencies administering the Charities Act to strengthen confidence in the sector regarding decision-making within the Charities Service.
42. One of the questions raised in feedback to CID was whether “Charities Registration have the appropriate staff, policies and expertise to do compliance? Extra compliance will come at a cost. Are they going to lift registration costs?” There is a genuine concern about whether the Charities Service have the capacity to undertake the full range of commitments outlined in the DIA discussion document. The funding of increasing capacity should not be passed on through registration costs to charities and NGOs whom are already struggling in the current funding environment.

Recommendation:

- 43. That the time duration to appeal a decision from the Charities services needs to be greater than just 20 days.**
- 44. That a charity should be able to retain its charitable status until all rights to an appeal have been exhausted.**

Independence, timing and inclusivity of Charities Act review process

45. There are a number of critics of the DIA discussion document whom state that the issues identified in the document are too narrow and do not yet permit a broader discussion. This would align with a view that the review should be changed to a first principles’ review of the Act, as promised in the Labour Party election manifesto.
46. It is understood that the review of the charities legislation is a priority for the Minister of the Community and Voluntary Sector; however, the current time-frame is still too short. It is an arbitrary timeframes to try and introduce legislation before the next General Election. This time-

frame suggests a fundamental lack of comprehension of the capacity of the charitable sector to engage.

47. The issues are complex and there is a multitude of stakeholders involved. Rather than utilising an election cycle to determine the timing of what is ultimately likely to be a substandard outcome, we request that time is given to fully consider fundamental questions and ensure engagement with all impacted groups.
48. It has been communicated to CID that significant concern still exists in regards to the many ethnic groups, many of whom the compliance proposals will directly impact, have not been given enough time to provide feedback. There is a sense that Pakeha, and groups capable to communicate in English, has been adequately engaged in the review process, but that this is not the experience for all.
49. The review as it is currently being undertaken, is being led by DIA, the Government department that is primarily responsible for administering existing charities law and policy. This does raise some question about the independence of the review, along with the ability of the review implementers to be adequately self-critical of existing policy.

Recommendations:

- 50. That there needs to be a more comprehensive approach to the legislative framework around the Charities Act review (similar to what has occurred with the review of the Incorporated Societies Bill and the Trusts Bill), and this needs to be undertaken in a way that has greater independence from the Charities Services.**
- 51. That there needs to be a greater level of consultation with groups other than Pakeha, Maori and those that can easily engage in English.**

This submission is from **Council for International Development**
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This submission has been written on behalf of, and in consultation and collaboration with NDRF membership. A full list of NDRF membership is available on the CID website at: <https://www.cid.org.nz/key-issues/ndrf/who-we-are/>.