

“Modernising the Charities Act 2005”: Submission from Hui E! Community Aotearoa

About Us - Hui E! Community Aotearoa

1. Hui E! Community Aotearoa (“**Hui E!**”) is a peak body for the tangata whenua, community and voluntary sector in Aotearoa New Zealand. Our organisation is guided by two key principles: Te Tiriti o Waitangi being visible and real in our community and our nation and embedded within our organisation; and the tangata whenua, the community and voluntary sector being recognised as essential contributors to beneficial outcomes in our society.
2. The focus of Hui E!’s mahi is:
 - Building the capacity and capability of the community sector;
 - Brokering and building relationships to improve positive outcomes;
 - Advocating on behalf of the sector to improve systems and processes; and
 - Galvanizing public and funding support for the sector and its organisations.
3. You can read our latest Annual Report and Strategic Plan [here](#) and we have outlined the values of our organisation in Appendix A to this submission.
4. In writing this submission, we bring together the collective experience and knowledge of our organisation and our [network](#) (both national and regional organisations). This submission reflects our network’s key shared views and concerns.

Recommendation 1: A First Principles Review of the Charities Act 2005 and related legislation

5. Thank you for the opportunity to comment on proposals to amend the Charities Act 2005 (“**the Act**”), as part of a targeted review of the Act. While we applaud the efforts that are being explored by government Ministers and officials to better support the sector in compliance matters with the Act, we want to emphasise that there needs to be a first principles review of the Act.
6. A first principles review is best done by an independent authority or group, such as the New Zealand Law Commission, to ensure the comprehensiveness and integrity of the process, to avoid any conflicts of interest (given the Department’s role and responsibilities within the current system) and to draw on particular expertise and related workstreams (such as the Law Commission’s recent work reviewing the Incorporated Societies legislation). It should not be the Department reviewing itself.
7. All Acts of Parliament, including a new or revised Charities Act, must include a Te Tiriti o Waitangi statement reaffirming the Crown’s commitment to Te Tiriti o Waitangi (Māori text) signed in 1840 and recognising this as the foundation document of the Nation. This should be included in Part 1, Preliminary provisions of the Act.

8. First principles means thinking about the tangata whenua, community and voluntary sector in a new way. Civil society organisations, including charities, are a cornerstone of a free and healthy democracy. The starting point shouldn't be that regulation is needed. The starting point should be to recognise the value and breadth of charitable organisations, and to ask what can be done to support this important mahi. It is in the Government's interest to foster a trusting and participative environment which enables charities to operate effectively.
9. Our network, and the charitable sector more generally, is wide-ranging and their work includes supporting some of the most vulnerable people in Aotearoa and their families. These charitable organisations have built important key relationships through communities and understand the front-line pressures that exist - from environmental to social concerns. Our network has expertise in their areas and work to support their beneficiaries and beneficial purposes. Many have volunteers or are volunteers themselves - who are committed to the mahi and kaupapa of their organisation. Nationally, just under a quarter (21.5%) of New Zealanders do some form of volunteer work, which is estimated at a value of \$4 billion dollars per annum.¹ A significant source of income for charities is donations.²
10. We feel confident that these rates would increase, if the sector was better supported, encouraged and celebrated by the Government for the work that it does. For example, a supportive rather than deficit model could include improved communications, resourcing frameworks, support for peak bodies, and a supportive legislative environment. There is limited evidence of Charities Services promoting the good work that is done by charities, to help raise the profile of the sector - beyond the [sector showcase web-page](#) and newsletters on its website (and we realise the funding restraints that organisation has itself for this function).
11. The need for a first principles review is urgent and has been underlined by COVID-19. In 2020, Hui E! teamed up with the Centre for Social Impact, Philanthropy New Zealand, and Volunteering New Zealand to research and report on the experiences of the tangata whenua, community and voluntary sector throughout COVID-19 and what was needed. The report released in last year is available [here](#) and the top recommendations include:
 - **Offer additional funding for collaboration** – Small and medium charities simply don't have the time or resources to invest in ongoing collaboration however they are motivated to make this happen. This needs funding to enable opportunities to build productive relationships, discover ways to work together, and collaboratively identify innovation and introduce new ways of working.
 - **Reach out to smaller and more diverse groups** – Likewise small and medium charities and voluntary groups traditionally don't have marketing/communications budgets but they are discoverable! Even without websites, most groups have social media pages and are easy to

¹ <https://www.volunteeringnz.org.nz/research/volunteering-statistics-nz/>.

² <https://www.charities.govt.nz/assets/Third-Quarter-snapshot-2021.pdf>.

find with a little bit of additional work. Māori, Pasifika and Ethnic community groups are also least likely to have reached out for help but most in need of support.

- **Support service redesign** - The majority of current funding models do not support charities to review or change their service design. Business SMEs have Chambers of Commerce, Business Mentor Programmes, Business Advisors and platforms such as Manaaki. Small and medium charities and voluntary groups, need this type of expertise now more than ever as they continue to respond to the impacts of COVID.
- **Improve government/community sector relationships** - Expand knowledge within government about the tangata whenua, community and voluntary sector, and improve policy and engagement advice about the sector to government agencies.
- **Sustainable funding for peak bodies/umbrella organisations** - Commit to sustainable funding for core national peak bodies/umbrella organisations to support representation, consultation and information sharing. Peak bodies are particularly important to ensure the voices of small and medium charities and voluntary groups are heard and represented. These charities and groups make up the majority of the community sector.
- **Providing support in other ways** - Simplifying funding applications and reducing the applicant burden will make a huge difference for community groups. Sharing networks and connecting community groups to in-kind support is another way to provide support. Inviting community managers to major events will help them make new networks and identify possible supporters. Contracting research needs to community groups who have clear understanding of community needs.

All these things illustrate that a much more wide-ranging review by an independent body is much needed.

12. The United Nations Sustainable Development Goals (“**the SDGs**”) and Agenda 2030 contain an explicit expectation that civil society organisations will be strong enough to work in partnership with both the public and private sectors. As reflected in SDG17 - partnerships are key for meeting the 2030 targets. In particular, target 17.7 has the following key component:

“Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships, data, monitoring and accountability [of the goals].”

13. A first principles’ review of the Act could help to ensure that the Government’s strategy for meeting the SDGs is met by strengthening the capability of the charitable sector to be involved and engaged.
14. Hui E! would welcome the opportunity to start this kōrero, as part of a genuine partnership approach. Hui E! is well placed to take a leadership role as a peak body and this is demonstrated through our previous work with partners and stakeholders on the development of an SDG Alliance

- to help make the SDGs a reality in New Zealand. This has included research and conversations to scope the viability of a cross-sector alliance for the SDGs to:

- share information, experiences, resources and best practice;
- coordinate and align activities within and in-between sectors and thus sharing a joined-up approach;
- foster an understanding of and increase commitment to achieving sustainability through a Te Ao Māori lens;
- accelerate change;
- increase meaningful collaboration within and across sectors, generations and populations; and
- measure and demonstrate our contributions domestically and globally.

Recommendation 2: Reflections on the Process for this Review (and future reviews)

15. The charitable sector in New Zealand has a lot to offer in government policy development and implementation - not just in respect of issues affecting our own legislation but on policy consultation across government departments and on legislation in the House. However, there is little to no resourcing available for this purpose from the Government. Frequently this means that organisations are either unable to participate, or are restricted in their ability to participate. Muting the voice of the charitable sector is not in anyone's interests and more can be done to support this process, including the role of peak bodies.
16. While we note that the Department has prepared a checklist submission document for this targeted review, this appears to have the primary benefit of supporting the processing of submissions by officials, rather than making the issues easy to understand or respond to for a sector that is under pressure and unfamiliar with government processes (often as a result of scarce resources).
17. Similarly, the initial deadline for making a submission reflects a disconnect between the reality of charity life and government process. This was too short. We are not aware of any accompanying presentations with an opportunity to ask questions for this targeted review. These will be new issues for many people given the nature of the sector. We would expect that the Department which is responsible for the policy and support of the charitable sector would use best practice engagement to ensure a meaningful process.

Key Recommendations

18. These recommendations should be read alongside the checklist document: **Appendix B**.
19. Hui E! supports proposals that enhance the education and information role of Charities Services. We would like to see it have a greater role in enabling easy compliance by charities so that these organisations have less administrative reading and paperwork and can focus on their core

business. Before the legal steps are taken, we would expect that Charities Services would work with the charity to help support compliance and rectification / restoration.

20. In discussions with our network, it is clear that there remains uncertainty about the conditions that would make a charity eligible for registration or subject to deregistration. Losing charitable status has significant reputational and financial implications, and many charities are not financed to support a formal legal challenge or the ongoing financial implications of the loss of that status and any tax benefits or donations that may have been lost through this period. These costs are particularly prohibitive for Tier 3 and 4 charities, who are not realistically able to legally challenge decisions - with a loss of services or other benefits to beneficiaries.
21. There needs to be further clarity over the legal meanings of “charitable purpose”, with a suggestion that it should align with the concept of “public good intent”. Similarly, there appears to be problems raised by government departments at different points about advocacy being undertaken by charities - where this may link to promoting their charitable purpose(s).
22. Particular concerns were raised about the need for the regulator to support charities that are run by people who are new to New Zealand and may be unfamiliar with the legal requirements, particularly governance and financial obligations. Support needs to be culturally appropriate and accessible, and include assistance with internal disputes. This should include a pathway for raising concerns and a restorative approach to managing changes, such as mediation. This pathway could be either at the government / regulator level or with peak bodies, such as Hui E!, if there was financing available.
23. More could be done to provide accessible resources to charities, for example short video clips on key topics, such as who can/how to register as a charity, common dos and don'ts, and key dates. There could also be a mentoring scheme established, this would need resourcing. One idea was having dedicated regional or district caseworkers who could work with charities in their area and support them with the processes and questions that arose. This could be an extension of the existing Hāpai Hapori services (which tend to focus on funding support) to include advice about the legal framework, governance issues, and mediation for disputes. That type of extended local role could also potentially have very real benefits in terms of identifying opportunities to partner between charities and government / funders, and could work alongside regional economic development offices and councils.
24. We support the availability of more accessible resources, and greater transparency in decision-making, including publication of all decisions by both Charity Services and the Charities Registration Board. We also support the establishment of a legal test fund, the broader range of subjects that could be subject to an appeal and submissions by a charity, and a new step for an independent body (such as a Tribunal) to consider matters prior to it going to the High Court. High Court processes and decisions are costly and lengthy, and there are a small number of legal experts in this area who could help either free of charge or at low cost - there needs to be an

interim step to avoid this cost (wherever possible) for all parties involved. Alternatively, fund organisations to support charities with these decision-making and appeal processes. The High Court is a sledgehammer. If there are any changes to the process, then there also needs to be a change in the support available for that changed process.

25. There was general support from Hui E! members for a regulator that is independent from the government, to help ensure the integrity of the office and avoid any perceived or real conflicts of interest. There was particular concern raised about the government of the day deciding who was eligible or not to be an officer of a charity or for a charity to exist, particularly where it was involved in advocacy as one of its charitable purposes.
26. Many organisations in the charitable sector are caught by requirements in other legislation, such as the Trusts Act and the Incorporated Societies Act. We agree that it is important that government officials consider the implications of this, and the need to avoid duplicate or conflicting regulatory requirements on those charities. The focus should be on outcomes, and if the outcome is met by one piece of legislation then there is no need to overly regulate.
27. In terms of who is eligible to be an officer of a charity, there was general support for youth engagement - particularly where the charity was involved in youth sector work. There was some support for aligning with the age in other relevant legislation, but also for certain roles to be excluded (such as treasurer), where there may be greater legal responsibility. However, this is all subject to there being greater and more accessible information being available about what the responsibilities of an officer of a charity are, and how to meet these obligations. Free training courses and resources would assist this process and enable younger members to participate more easily.
28. In terms of disqualifying criminal convictions, we generally do not consider that these should be prohibitive for all people indefinitely. Such a strict approach would be unduly restrictive, when a person has undergone rehabilitation programmes, it is a historic offence, and they have re-established themselves as a contributing member of society. If there was a discretionary model operating, then there would need to be clear transparency over what criteria applied, to avoid bias or unfair treatment, and to support integrity in the system. There are principles of the Clean Slate legislation that could be usefully applied here, and there was also support for transparency requirements (eg. to disclose any previous convictions) to members of a charitable organisation when a person was running in elections for, appointed, co-opted or seconded to an officer role in the charity. Members raised concerns about people with certain offences (such as sexual offences) being involved in charities that had a youth focus - and it would be useful to consider how this fits alongside core children's worker requirements in the Vulnerable Children Act 2014.
29. Thank you for the opportunity to submit. For further comments, please contact Rochelle Stewart-Allen at rochelle@huie.org.nz, Phone 027-36-38-665.



This joint submission is provided by Hui E! Community Aotearoa's formal network, including the following organisations:

Age Concern New Zealand

Ara Taiohi

Alzheimers New Zealand

Awhinui Umanga Trust

Auckland North and Community Development Inc

Community Housing Aotearoa

Community Law Wellington & Hutt Valley

Community Waitakere

Make-A-Wish Foundation of New Zealand Trust

Network Otautahi Waitangi

New Zealand Coalition to End Homelessness

Volunteering New Zealand

YWCA of Hamilton

Zero Waste Network

Appendix A: Our Values - Hui E! Community Aotearoa

Te Whakakaha: strengthening the collective voice of the sector to build a stronger Aotearoa New Zealand

Te Hāngai: applying Te Tiriti o Waitangi in the context of the sector's work and its contribution to charitable outcomes across Aotearoa New Zealand

Te Whakatairanga: engaging the sector as a whole and enhancing its independence and relevance

Te Āwhina: assisting communities to work collectively to progress their own aspirations and well-being, environmental, social, cultural, economic

Te Whakawhanaungatanga: creating opportunities for the sector to connect and learn from each other

Te Whakanui: promoting the unique characteristics and impact of the sector

Te Tautoko: supporting strategic advocacy and leadership development within and on behalf of the sector to enhance charitable outcomes within Aotearoa New Zealand

Te Tautoko: supporting Māori self-determination/tino rangatiratanga, especially within the sector

Te Whakapuawai: developing the capability and capacity of the sector to succeed through meeting shared needs, supporting innovation, and participating in civic affairs.

^[1] <https://www.volunteeringnz.org.nz/research/volunteering-statistics-nz/>.

^[2] <https://www.charities.govt.nz/assets/Third-Quarter-snapshot-2021.pdf>.

Appendix B: Checklist

Options

Part 1: Structure of the regulator and decision-making	Do not support	Support	Do not know
Option 2: Clarify current structure and decision-making processes			
Providing more information to the sector and public on how the regulator operates and makes decisions.		✓	
Amend the Act to clarify how the Registration Board makes its registration decisions and how information is considered where possible.		✓	
Option 3: Increase accountability and transparency requirements on the regulator			
Mandatory public reporting requirements		✓	
Requirement for Charities Services to publish their decisions (in addition to publication of Registration Board decisions).		✓	
Making the current Charities Sector Group a formal advisory body under the Act, and increasing its role/ functions.		✓	

Through amendments to the objections mechanism under the Act, enable entities to be able to speak to the Registration Board (alongside providing a submission) when a registration decline or deregistration is being proposed by Charities Services.		✓	
Option 4: Strengthen the independence of the Registration Board			
Provide for the Registration Board to have its own secretariat and/or increase its oversight functions of Charities Services and increase the number of Board members.		✓	

Part 2: The appeals framework	Do not support	Support	Do not know
Option 2: Expanding decisions available for appeal – to include those that impact a charity financially, create additional requirements for charities, or may cause potential damage through the public release of information.		✓	
Option 3: Establishment of a Test Case Litigation Fund – to provide financial assistance to registered charities and entities, to help them meet some, or all, of the litigation costs of their appeal.		✓	

<p>Option 4: Appeals heard at the High Court as hearings <i>de novo</i> – to allow the decision to be considered afresh, and to allow the Registration Board to be party to the appeal.</p>		✓	
<p>Option 5: The introduction of a new appeals body prior to the High Court, through either</p>			
<ul style="list-style-type: none"> ● the use of an existing Tribunal (expanded to hear Charities Act appeals); or 		✓	
<ul style="list-style-type: none"> ● the establishment of an Appeals Panel. 		✓	