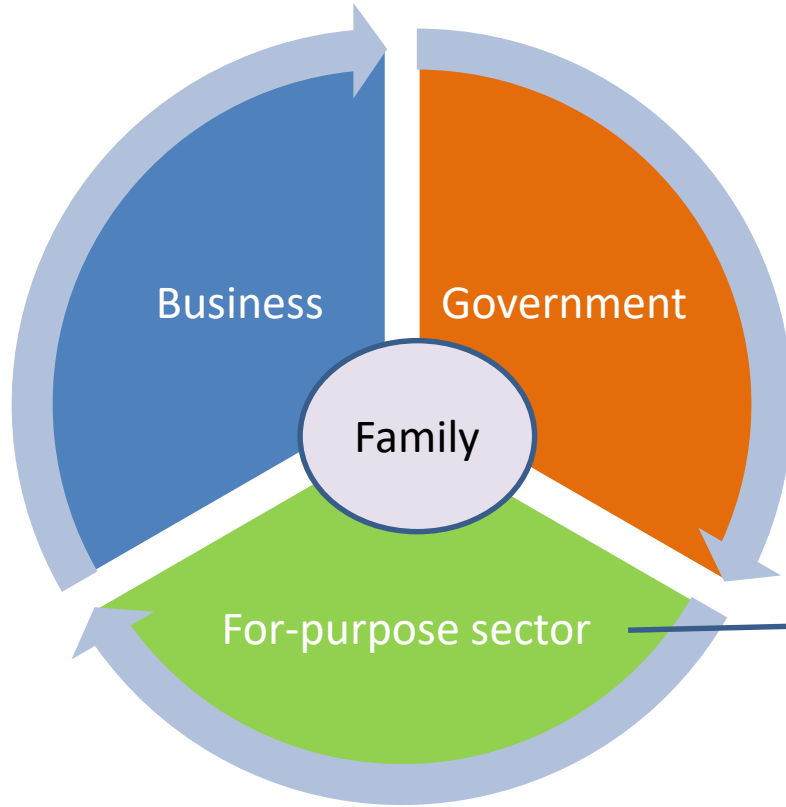




Charities law reform – why it matters?

17 March 2021



Charitable sector:
\$58 billion assets
under management



SUSTAINABLE DEVELOPMENT GOALS

1 NO POVERTY

2 ZERO HUNGER

3 GOOD HEALTH AND WELL-BEING

4 QUALITY EDUCATION

5 GENDER EQUALITY

6 CLEAN WATER AND SANITATION

7 AFFORDABLE AND CLEAN ENERGY

8 DECENT WORK AND ECONOMIC GROWTH

9 INDUSTRY, INNOVATION AND INFRASTRUCTURE

10 REDUCED INEQUALITIES

11 SUSTAINABLE CITIES AND COMMUNITIES

12 RESPONSIBLE CONSUMPTION AND PRODUCTION

13 CLIMATE ACTION

14 LIFE BELOW WATER

15 LIFE ON LAND

16 PEACE, JUSTICE AND STRONG INSTITUTIONS

17 PARTNERSHIPS FOR THE GOALS

SUSTAINABLE DEVELOPMENT GOALS

Myth:

- Charity is an old-fashioned, paternalistic, colonialist Victorian concept of handouts to the poor
 - perpetuating a deficit-based, capitalist distinction between “haves” and “have nots”

Key “fault lines”:

- Charities running businesses/social enterprises
- Charities advocating for their charitable purposes
 - Greenpeace
 - Family First – Supreme Court hearing June 2021
 - Better Public Media Trust
- Social housing
- Sport
- Economic development
- Public interest journalism
- Many others

Social capital

“**Civil society is essential to building a strong society** and economy and I believe that all of us, regardless of political persuasion, should passionately, explicitly and unashamedly support people getting involved in their community, coming together in clubs, groups and societies, starting charities, social enterprises or community businesses. Doing things for the wider public benefit, not simply private gain.

We know that a better future is about more than growing the economy. In a famous speech of more than 45 years ago, Robert Kennedy said that GDP ‘does not allow for the health of our children, the quality of their education, or the joy of their play. It measures neither our wisdom nor our learning; neither our compassion nor our devotion to our country; it measures everything, in short, except that which makes life worthwhile.’ For many, the answer instead lies in civil society. **It is charity and volunteering that allow them to find identity, meaning and purpose, a sense of autonomy, pride and utility. It is often how we find balance in our lives, pursue our passions, or fight for change. And for society at large, it is often how we build stronger communities, give people a say in what happens to them. It is how we provide services that people depend upon, develop new ways of doing things, and nurture the people who will lead our future.**”

- National Council of Voluntary Organisations, January 2019

Background – pre-Charities Act 2005

- no requirement or formal process for **registering** charities
 - no complete list
- lack of **reporting** requirements
- therefore very little government **monitoring** of whether charities continued to act in furtherance of their **stated** charitable purposes

Gestation of the original Charities Bill

Original Charities Bill preceded by a number of reports:

- Property Law and Equity Reform Committee **1979** – *Report on the Charitable Trusts Act 1957*
- **“Flat tax” proposal 1987**
- New Zealand Federation of Voluntary Welfare Organisations 1988 – voluntary welfare commission
- **Working Party on Charities and Sporting Bodies 1989**
- Accountability of Charities and Sporting Bodies Working Party 1995
- Committee of Tax Experts, March 1998
- **Government review of the tax treatment of charities:**
 - ***Tax and charities, June 2001***
 - *Taxation of Māori organisations, August 2001*
 - **Working Party on Registration, Reporting and Monitoring of Charities 2002**
 - recommended a Charities Commission, responsible for a registration, reporting and monitoring regime for New Zealand charities

Pre-Charities Act recommendations

Working Party on Registration and Monitoring of Charities 2002
- recommended a Charities Commission, structured as a Crown entity:

“It is our strong view that a Charities Commission would be most acceptable to the charitable sector. This is important as it would mean the **costs of monitoring and enforcement** are likely to be less if the sector supports and has **confidence** in the organisation.

Any lesser alternative would fail to adequately recognise the **importance and independence** of the charitable sector.”

Charities Bill 2004

- Introduced March 2004
- The concept of a Charities Commission had overwhelming support
- But the Bill itself was heavily criticised:
 - “conceived in Treasury and designed in the Ministry of Economic Development”
- The Bill was virtually rewritten at Select Committee stage in response to hundreds of submissions
- Changes subject to very limited consultation only

Charities Bill 2004

National Party members of the Social Services Select Committee (Report, p20):

“The consultation process was inadequate with the original bill and we have major concerns that the redrafted sections of the bill should have been made available for a further period of sector wide consultation. We all know the devil is in the detail and if the bill gets it wrong, as the first draft definitely did **the charitable sector will pay the price** and we will see many charitable organisations close. There is the possibility that there are a number of **structural issues** in the bill remaining unaddressed and without a further period of consultation with the sector it is difficult to fully identify these”. [Emphasis added]

Charities Bill 2004

- Remaining stages passed through under urgency on 1 day
- But: promise of **full first principles post-implementation review**
- Charities Commission established 1 July 2005
- Charities register opened February 2007
- Tax provisions came into force on 1 July 2008
 - had to be registered to access the charitable income tax exemptions
- Cap on donee status lifted April 2008

Unintended consequences

- Section 5(3) – ancillary purposes and “for example advocacy”
- Section 18(3) and 10(h)
 - method for determining purposes
 - distinction between **purposes** and activities
- Section 20 – ability to backdate registration
- **Section 59 – appeals to High Court**
- Section 3(b) – purposes of the Act

Piecemeal amendments

- Section 5(2A) – the promotion of amateur sport:
 - “(2A)The promotion of amateur sport may be a charitable purpose if it is the means by which a charitable purpose referred to in subsection (1) is pursued.”
- May 2011, proposal to disestablish the Charities Commission
 - controversial Crown Entities Reform Bill passes by 1 vote in May/June 2012
- Section 18 – 20 day time limit
- Charities Amendment Bill 2016
 - proposal to remove charities’ rights of appeal!
 - fortunately did not proceed, but inconsistency remains

Labour party policy 2017

- consult with the community and voluntary sector on whether the **disestablishment of the Charities Commission** and transfer of functions back to the Department of Internal Affairs has resulted in effectiveness and improved services and information for the sector
- **prioritise the long-promised review of the Charities Act** that National abandoned, beginning with a **first principles review** of the legislation, including examining, **updating and widening rather than narrowing** the definition of charitable purpose
- ensure that community and voluntary organisations can engage in **advocacy** without fear of losing government contracts or their charitable status

Review of the Charities Act

- Change of Government September 2017
- Review announced November 2017
- Draft terms of reference circulated to sector group January-March 2018, but concerns regarding:
 - nature
 - scope and
 - timing
- Terms of reference finalised anyway, May 2018!

Review (continued)

- officially commenced 24 May 2018
- core reference group established August 2018
 - note: no report
- timeframe extended:
 - DIA discussion document issued **February 2019**
 - public consultation **March/April 2019**
 - submissions closed May 2019
 - 363 submissions received
- summary of submissions released **December 2019**
 - “the charitable sector has spoken”

Progress of the review

- February 2020 – 3 issues:
 - reporting requirements for small charities
 - charities' business activities
 - accumulation of funds
- Tax Working Group
- May 2020 – review paused for 6 months due to covid
- New Minister's speech December 2020
 - “proceed with care”

Key issues

- Proper appeals process
- Independent decision-making body
- Need to clarify the purpose of the regime
- Need to clarify the test for when a purpose is charitable
- How to infuse tikanga principles into New Zealand charities law?
- Review must be independent of DIA
 - co-designed with the sector
- CRB calling for the review to be transferred to the Law Commission

Last word:

- **New Zealand Law Foundation 2019 International Research Fellowship Te Karahipi Rangahau ā Taiao** – September 2021,
www.charitieslawreform.nz
- **LinkedIn group:** NZ Charity Law
- **Facebook** page: Charities Act Review 2020:
<https://www.facebook.com/groups/1932023316889903/>



www.charitieslawreform.nz

www.charitieslaw.co