

## **Independent Community Consultation To Inform The Review Of The Charities Act (2005) Survey Report 22<sup>nd</sup> May 2019**

### **1. Introduction**

Strategic Grants worked as an external evaluator with the purpose of assisting Dave Henderson of Trust Democracy, and Sue Barker of Sue Barker Charities Law, with their independent consultation with charitable groups in New Zealand. The purpose of the consultation is to provide community input to the review of the Charities Act 2005.

At the close of the online survey, 662 responses were received. The survey was distributed via email to charities across the country, and during community workshops.

### **Background**

Charities form a significant part of New Zealand's not-for-profit sector. With more than 27,000 registered charities, the charitable sector makes an important contribution to New Zealand society, founded on the Treaty of Waitangi.

The Charities Act 2005 was introduced to provide a registration, reporting and monitoring regime for New Zealand's charities. Registration is voluntary: charities that are not registered are still able to call themselves a charity and to collect funds from the public. However, registered charitable status has become the gateway to a number of tax, funding and reputational privileges.

Stakeholders in the charitable sector have sought a review of the Act for a number of years. In 2018, the Government announced an intention to review the Charities Act (2005) to ensure that the Act is effective and fit for purpose. While the Government considers the fundamentals of the Act to be sound, there are a range of substantive issues that are within the scope of the review.

#### *Matters within scope of the Charities Act (2005) review*

Substantive policy matters within the scope of the review are:

1. Matters relating to additional purposes of the Act
  - a) Whether any additional purposes of the Act are necessary
2. Matters relating to the regulatory framework

- The role, functions, structure, powers, accountability and appeal ability of the agency responsible for administering the Charities Act (currently, the independent Charities Registration Board and the Department of Internal Affairs – Charities Services);
  - The purpose and content of the publicly-accessible charities register;
  - Funding for the government to administer the legislation (including the mix of Crown funding and fees from the charitable sector);
  - Mechanisms to challenge or appeal decisions of the government, including decisions over the interpretation of ‘charitable purpose’, and to support the development of case law;
  - Offences and penalties. For example, creating intermediate sanctions as alternatives to deregistration, or issuing penalties after an entity has been deregistered but before it is wound up; and
  - Regulation of third-party fundraisers (that is, professional fundraisers or commercial operators that raise funds on behalf of a charity).
3. Matters relating to registration and deregistration
- a) Registration requirements (not including the definition of ‘charitable purpose’), and the ability to backdate the registration of an entity;
  - b) Deregistration requirements;
  - c) The extent to which businesses that solely raise funds for registered charities can register under the Act; and
  - d) The extent to which registered charities can advocate
4. Matters relating to the obligations of registered charities
- a) The obligations of registered charities; and
  - b) The obligations of individuals on governance boards and in senior management roles in registered charities, including looking into governance standards for registered charities.
5. Links to other legislation
- a) The interface between the provisions of the Act, and provisions in the Incorporated Societies Act 1908 (and proposed Incorporated Societies Bill), Charitable Trusts Act 1957 and the Trusts Bill (with the aim of better alignment).

### *Community Consultation*

As part of the review, the Department of Internal Affairs (DIA) presented at 21 community meetings and an additional 5 hui throughout the country between 6 March and 18 April 2019.

With the support of the Minister for the Community and Voluntary Sector, Hon Peeni Henare, the community meetings were organised in

collaboration with Dave Henderson and Sue Barker, who also presented at the 21 community meetings to provide an alternative perspective. Their attendance was possible thanks to the support of a consortium of philanthropic trusts. Dave and Sue are both members of the Core Reference Group for the review of the Charities Act 2005, however, the research and their attendance was undertaken independently of government. The national survey was undertaken with a view to gathering empirical evidence to feed into the review.

The survey and report were produced as a Pro Bono service by Strategic Grants, to summarise the key matters from the charity sector's views. Core issues and possible solutions relating to the Act and the scope of the review have been surveyed and are presented in the Results section of the report.

## 2. Summary of Results

- The survey did not seek feedback on the language and terminology used related to the Act. However, in community consultations a number of issues were raised with the language used in the scope of the review, such as with the government's description of the Act as sound; the framing of the word advocacy and the use of the term "charities regulator".
- Respondents to the survey indicated they were only somewhat informed of the Charities Act 2005.
- Respondents indicated greater or expanded definition/clarification of charitable purpose, charitable benefit, status and advocacy is required.
- The three most relevant activities by the Charities Registration Board and Charities Services included:
  - Promote public trust and confidence in the charitable sector
  - Educate and assist charities in relation to matters of good governance and management
  - Compile and maintain the charities register
- A further purpose of Charities Services should be to educate and support professionalism in the sector and encourage best practice.
- Charities Services should actively research, collect, analyse and publish data on best practice for the charitable sector.
- DIA could/should play a role to reduce duplication of charities by supporting alignment collaboration, and umbrella or collective networks.
- Reporting, and administration requirements for registration are problematic specially for Tier 3 & 4 charities.

- The interface between legislative Acts, registration processes and reporting require simpler processes to enhance and support New Zealand's rich *philanthropic* position.

### 3. Methodology

#### **Survey Development**

In 2018, Strategic Grants developed a series of questions to gather views of the charitable sector in relation to the review of the Charities Act (2005). The questions directly respond to the scope of the review and included closed and open questions. Demographic questions determined the legal status and registration of organisations, position of the respondent in the organisation, size of the organisation and organisations mission. The remaining questions related directly to the matters within the scope of the review. The survey was piloted during community consultation on the 18<sup>th</sup> of October 2018 and final amendments were made.

The survey was open from the 25<sup>th</sup> October 2018 to March 2019. The 39-question survey included quantitative and qualitative questions.

#### **Data Collection**

Data was collected online using the web surveying tool Survey Monkey. Invitation to participate in the survey was distributed via email, via social media, and at community workshops over four months.

A total of 662 surveys were logged, taking an average of eleven minutes to complete the survey. Of the 662 surveys started, 85 did not complete the survey adequately to be included in the data. A further 113 completed the demographic and registration questions with minimal completion of other questions. Conditional branching was used within the survey, creating custom pathways that varied based on a respondent's answers. Respondents navigated to questions only relevant to them, hence not every question was answered by all respondents. A total of 577 were included in the analysis of the data.

Survey questions are in Appendix A and participant responses are in Appendix B.

#### **Response and sample profile**

The sample of 577 respondents is a representative sample of the charitable organisations across New Zealand representing varied types, size and missions. The three most frequent organisational structures that applied to respondents were Charitable trust board incorporated under

the Charitable Trusts Act 1957 (30%), Society incorporated under the Incorporated Societies Act 1908 (28%), and Society incorporated under the Charitable Trusts Act 1957 (22%). 11% responded other, several indicated they were unsure which structure applied to their organisation. Other respondents specified they were from Philanthropic Trusts, donors (members of the community), fundraisers, religious entities, or lawyers working for charitable organisations.

Half the respondents identified as either Senior Managers (18%) or CEO/Directors (32%). The majority of respondents were from small organisations with 1-5 paid staff (38%), or all volunteers (20%). 18% of respondents were involved in organisations with 6-15 paid staff and 24% were from organisation that had more than 16 paid staff.

Just under half respondents with reporting obligations to Charities Services (responses to Q13) identified as Tier 3 organisations (revenue under \$2 million), 23% indicated tier 2 (under \$30 million) and 24% tier 4 (under \$125,000). 3% indicated tier 1 (over \$30million).

87% of the respondents indicated they were registered with Charities Services as a charity (Q8). Of the 14% (n82) who indicated they were not registered (Q9), n48 gave reasons for not being registered as; registration was refused n6; n2 withdrew their application; and n1 respondent indicated they were deregistered; n39 indicated they had never applied for registration.

### **Data Analysis**

To minimise bias in interpretation of the data, analysis was undertaken by researchers external to the charitable sector in New Zealand. Data analysis generated descriptive and inferential statistics as well as themes significant to matters within the scope of the review. In turn, quantitative data (i.e. scaled survey responses) were analysed for descriptions and inferences in response to the questions. Qualitative data (i.e. open-ended survey items) were analysed against the pre-determined interests within the scope of the review. The relationships between multiple variables were examined for the entire group of respondents as well as results from sub-groups of survey respondents to identify trends across the data. The analysis aligned to the key matters within the scope of the review to provide community feedback related to ensuring the Act is fit for purpose.

The full set of participant responses are in Appendix B.

*I hope you are engaging an academic to assist with your "empirical" evidence gathering and not just pushing your own agenda. I think you should also make all responses public so that it's transparent. (ID# 10364788641)*

#### 4. Results

The following section includes the responses of 577 representatives from the charitable sector who responded to the survey (38 items). Commonly, respondents indicated having contact with Charities Service once a year or less (Q7).

After demographic items, the first set of questions (Q4 - Q7) examined respondents' thoughts on the Charities Act 2005. Predominantly, respondents indicated they were only somewhat informed of the Charities Act 2005 (Q4). On a scale from nought (not informed) to ten (fully informed), responses averaged just under 6 suggesting there is room for improvement in communicating knowledge about the Charities Act 2005 to the charitable sector. Respondents believed the level of public trust and confidence in the charitable sector has an impact on their group or organisation (Q5), and for most, the benefits of being a registered charitable organisation (Q6) outweigh the costs.

#### **Purposes of the Act**

This section responds to the substantive policy matters within the scope of the review pertaining to additional purposes of the Act:

- a) Whether any additional purposes of the Act are necessary.

#### *Views of purposes*

The survey included 4 items (Q20, Q21, Q24, Q38), which provided insight to respondents' views of purposes and additional purposes of the Act.

Question 20 was an opened ended question that specifically sought views on the purposes of the Act. n380 respondents described their views of purposes and the balance of regulatory control relative to the purpose of the Act.

The majority indicated satisfaction with the purposes of the Act, suggesting it was 'helpful', 'good', 'fine' and 'the right balance'.

*I view the Charities Act 2005 as vital to ensure accountability and transparency in the charity sector. (ID#610541110864)*

Promoting public trust and accountability of the charitable sector was significantly valued by respondents as a core purpose, and with which respondents indicated satisfaction.

*Generally, the purposes suit not only the trusts but wider society, particularly in providing education, social and health services that would otherwise fall on the government or be unaddressed, leaving communities and members severely lacking in these services. There is a degree of accountability. (ID#10540199202)*

Some respondents who were satisfied with the overall purposes of the Act, also indicated that a further purpose of Charities Services should be

to educate and support professionalism in the sector and encourage best practice. Suggestions included providing guidance, guidelines and assistance around the legal requirements for charities; greater recognition and acknowledgement of the contributions of charities; and build governance capacity of the sector.

*'Support' rather than 'promote' would be of better value to charities. Practical assistance in supporting charities would be useful. (ID# 10374699093)*

Respondents mostly representing smaller organisation (Tier3 & Tier4), indicated reporting and administration requirements are problematic, especially in relation to resource poor or largely volunteer based charities.

The registration of societies, institutions, and trustees of trusts as charitable entities was viewed as 'onerous', 'costly' for some 'a politicization', and the criteria for registration 'quite far-reaching' or 'fixed'.

While not representing all views, one respondent (#10391424278) succinctly summed up a number of concerns raised;

*Responding to each of the purposes as listed in the Act:*

- a) *While a worthy purpose, there needs to be a strong consistency over time. If some historic organisations have charitable status and other more recent, almost identical, organisations are not granted it, the public could have concerns about the process and question the validity of both organisations, with the overall effect of reducing confidence in the charitable sector.*
- b) *Again, a worthy aim, but in practise Charities Services, in their interpretation of the Act, seems to be putting up unnecessarily high barriers to registration, so that worthy would-be charities are having to expend a lot of time, energy, and financial resources trying to get registered. Worthy would-be charities without sufficient initial backing, would not able to pass the first hurdle of registration.*
- c) *Although this is a stated purpose, in the practical outworking of the Act, there seems to be a disinclination to register new charities.*
- d) *We agree with this purpose, and it is very necessary for the integrity of the sector.*
- e) *We wonder if the membership of the Board making decisions about registration and deregistration is suitably broad. Are three members enough? Do they have sufficient legal expertise to fulfil their function? Should they have access to independent technical legal opinion? We note that there is currently only one board member who is a lawyer - is this appropriate when points of law are very germane to whether or not an organisation gets registered or not?*
- f) *We do not have enough information about the CEO's performance to comment.*

Respondents expressed mixed views in relation to the level of control appropriate for Charities Services to implement the purposes of the Act.

#### *Additional purposes*

Question 21 asked respondents to *Please describe any additional purposes of the Act that should be considered, which would be useful for the charity sector.* Respondents were also asked to describe additional purposes in Q24. A number of clear themes emerged in the data from both questions including:

- I. Promote the charitable sector and engender public and government confidence. *'To advocate for the charitable sector and to act as an intermediary for charities to deal with government or local authorities on matters pertaining to the sector.'* (ID#10377529228)
- II. Greater or expanded definition/clarification of charitable purpose, charitable benefit and status. Some respondents specifically raised issue with the definition of the word advocacy and its application to assess registration of charities (this will be further examined under 3d of the matters in the scope of the review (p.19). *'Definition of "charity" may need re-interpretation.'* (ID#10383562749)
- III. Provide information, support and education to charities on best practice governance and management practices. *'I think DIA has a role to play in education and improving the performance/capability of the sector.'* (ID#10364533463)
- IV. Collect, analyse and publish data on the charitable sector to acknowledge the work achieved and champion best practice. *'Support research into the charity sector, so that it can identify trends and facilitate change to keep the sector relevant, efficient and targeted to need.'* (ID#10374551354)
- V. Encourage alignment and collaboration amongst charities to reduce duplication. *'As part of the registration process there should be some process or mechanism to help manage duplication of charitable entities and the services being provided.'* (ID# 10393359226)
- VI. Broker opportunities for the charities sector. *'Pairing charities with a business enterprise for either a) developing a collaborative social enterprise; or b) for said business to contribute financially to our charity in real terms as part of the ideology of corporate responsibility.'* (ID# 10371251345)

### **Regulatory framework**

#### 2. Matters relating to the regulatory framework

- a) The role, functions, structure, powers, accountability and appeal ability of the government agency (currently, the independent Charities Registration Board and the Department of Internal Affairs – Charities Services);
- b) The purpose and content of the publicly-accessible charities register;
- c) Funding for the government agency to administer the legislation (including the mix of Crown funding and fees from the charitable sector);
- d) Mechanisms to challenge or appeal decisions of the government, including decisions over the interpretation of ‘charitable purpose’, and to support the development of case law;
- e) Offences and penalties. For example, creating intermediate sanctions as alternatives to deregistration, or issuing penalties after an entity has been deregistered but before it is wound up; and
- f) Regulation of third-party fundraisers (that is, professional fundraisers or commercial operators that fundraise on behalf of a charity).

The survey included 11 items (Q22, Q23, Q26, Q27, Q28, Q29, Q31, Q33, Q34, Q35, Q37, Q38) related to matters relating to the regulatory framework.

#### *Roles and functions*

Question 22 asked respondents to indicate how important the roles and functions of the Charities Registration Board and the Department of Internal Affairs – Charities Services were to their organisation. Nearly all respondents (n405) indicated that these roles and function were important at some level (important, fairly important, very important) to their organisation.

In seeking responses to indicate the three most relevant activities by the Charities Registration Board and the Department of Internal Affairs – Charities Services to the respondent’s organisation the three most prioritized activities included:

1. Promote public trust and confidence in the charitable sector
2. Educate and assist charities in relation to matters of good governance and management
3. Compile and maintain the charities register

Role or function	Not important	Slightly important	Important	Fairly important	Very important	Weighted Average
Considering applications for registered charitable status	3.95%	6.42%	20%	13.83%	49.63%	4.8
Compiling and maintaining a register of charities	1.74%	4.48%	19.15%	18.91%	54.98%	5.19
Deregistering charities for non-compliance, serious wrongdoing or because they "no longer qualify for registration"	2.22%	6.42%	17.04%	13.91%	59.75%	5.17
Monitoring charities and their activities to ensure that registered charities continue to be qualified for registration	3.96%	5.69%	21.53%	22.03%	45.54%	4.96
Inquiring into conduct that may be a breach of the Charities Act or serious wrongdoing	1.24%/	5.20%	19.06%	17.08%	55.94%	5.17
Educating and assisting charities in relation to matters of good governance and management	7.92%	5.20%	18.56%	24.01%	42.57%	4.83
Processing annual returns submitted by charities	2.97%	9.65%	25.50%	24.75%	35.89%	4.77
Stimulating and promoting research into any matter relating to charities	7.94%	14.14%	24.32%	25.06%	26.05%	4.4

Table 1 Q22

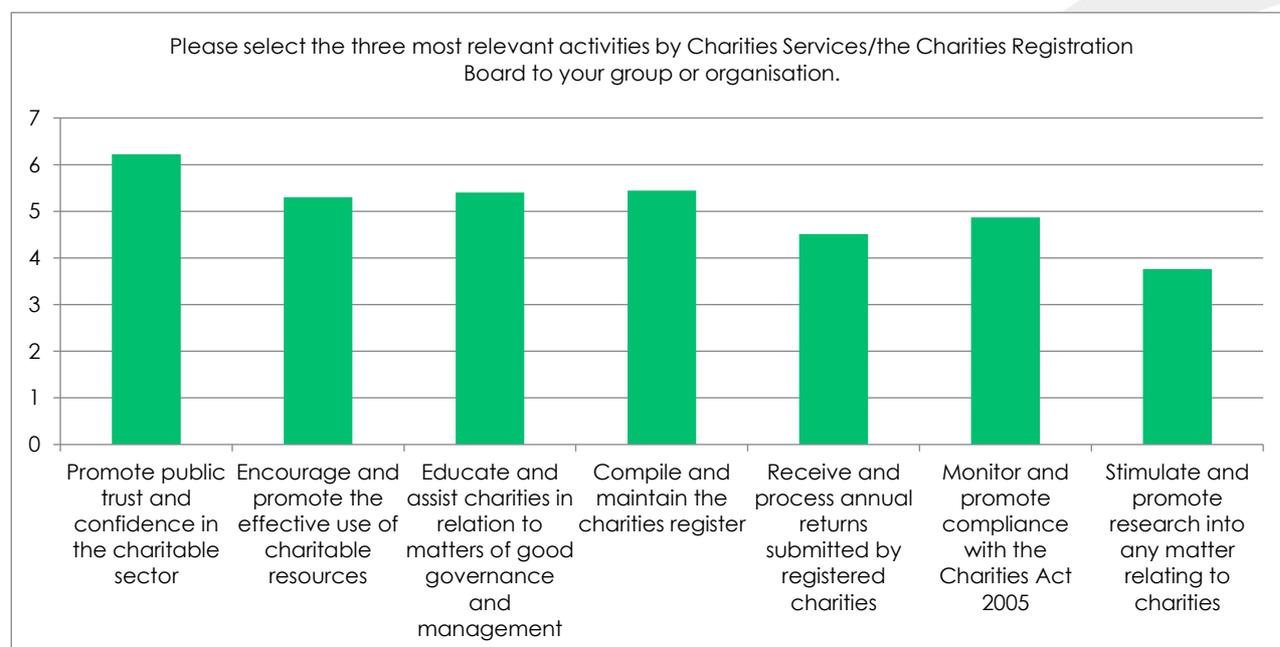


Table 2 Q 23

Statements	Strongly disagree	Disagree	Not sure	Agree	Strongly agree	Weighted Average
DIA Charities Services should have comprehensive powers to respond to serious wrongdoing as outlined in the Charities Act 2005	0.26%	3.66%	7.83%	44.13%	44.13%	4.28
DIA Charities Services should have powers to respond to wrongdoing that is less than "serious wrongdoing" as outlined in the Charities Act 2005	1.31%	4.00%	20.05%	49.61%	22.05%	3.86
DIA Charities Services should have authority to monitor charitable activities regardless of whether or not the charity is registered as a charitable entity.	9.71%	17.32%	24.15%	28.61%	20.21%	3.32
In principle, it is for charities to determine how best to further their charitable purposes, not DIA Charities Services	4.46%	7.09%	16.80%	37.27%	34.38%	3.90
DIA Charities Services should be accountable for the decisions it makes in relation to the Charities Act 2005	0.00%	0.26%	14.47%	28.42%	66.84%	4.62
Charities Services should have authority to continue investigation of a charity even if the group voluntarily removes itself from the register while it is being	3.93%	8.90%	16.23%	36.91%	34.03%	3.88

Table 3 Q25

### Structure, powers, accountability

Table 3 (Q25) highlights respondent's agreement with the powers, authority and accountabilities Charities Services should have to administer the Charities Act 2005. The majority of respondents indicated agreement or strong agreement with the statements outlined in table 3. Responses to the statement *DIA Charities Services should have authority to monitor charitable activities regardless of whether or not the charity is registered as a charitable entity*, however were more varied in their agreement, supporting respondents' mixed views expressed in relation to the level of control appropriate for the Charities Services (Q20).

Q24 asked respondents to describe *other activities that are/or would be relevant to your group or organisation*. Responses can be understood as forming four thematic clusters related to structure, powers and accountability. These include:

1. Governance and accountability
  - *I wish there was a government agency that did assist charities around good governance and stimulate and promote research. Charities Services doesn't, so I haven't ranked it highly. You're a regulator as far as I see it. The charities sector needs far more support - if it is to be efficient and effective. (ID# 10407656471)*

- *The question isn't what the roles and functions are, it is - are they actually being carried out - and the answer is 'no' and /or 'not effectively'. Monitoring should be part of maintaining the register. (ID# 10374699093)*
  - *At present there is, as far as I know, no process for addressing abuses and breaches within self-perpetuating non-profit organisations other than private legal action that often becomes prohibitively expensive. Crown Law and Attorney General have a legal duty but are ineffectual in practice. (ID# 10363422779)*
  - *More emphasis on the sector as a whole to encourage and promote the effective use of charitable resources. Heads of charity should be reviewed as part of this project. Also need to consider social enterprises and how they fit in the sector. (ID# 10382821268)*
2. Policy
- *Policy development on improving the philanthropic environment - e.g. taxation policy (ID# 10410372139)*
  - *To better enable the role of advocacy in providing high level policy advise to create sustainable impacts on social outcomes. (ID# 10382821268)*
  - *Provide sound link between organisations and parliamentary policy (ID# 10377457758)*
  - *Providing a framework and guidance for social enterprises so that they can support charities in a tax efficient manner (ID# 10374551354)*
  - *Significant work needed to develop an appropriate legal structure for social enterprise in NZ - a Public Benefit entity or such like (ID# 10301956318)*
3. Streamlined processes and departments
- *Make annual reporting really simple for orgs with annual turnovers under \$750,000. (ID# 10399398618)*
  - *Be more informed to answer questions. More than once I have been shunted from Charities Services to Companies Office to IRD and back again. (ID# 10497132678)*
  - *It is not a matter of additional functions but the consistent and thorough implementation of the functions that are already required under the existing Act. If these functions are being consistently and thoroughly implemented, then it is a matter of better communication to all registered entities about the work being undertaken. (ID# 10391450988)*
  - *"Providing a one-stop portal for governing and managing a charity - including webinars on how to run board meetings, what records to keep, how to employ people, how to*

*implement and run H&S training, links to relevant legislation, etc. (ID#10374551354)*

4. Requirements and guidance

- *Providing a framework and guidance for social enterprises so that they can support charities in a tax efficient manner (ID# 10374551354)*
- *Facilitate the donee status process on behalf of IRD (ID# 10368722977)*
- *How about assisting charities in their relationships with other govt agencies / funders, e.g. issues of payment dispute, overly burdensome, disharmonious and contradictory requirements set by different govt agencies etc. (ID# 10364815392)*

In Q31 respondents (n357) indicated how the organisation that administers the Charities Act should be structured. The majority felt it should be administered as an Autonomous Crown Entity (43%), as was the case with the Charities Commission. 30% of the respondents indicated it should be as a Government Department, with registration decisions made by the Charities Registration Board, as currently. 15% indicated it should be administered as an Independent Crown Entity. Table 5 below, illustrates all responses.

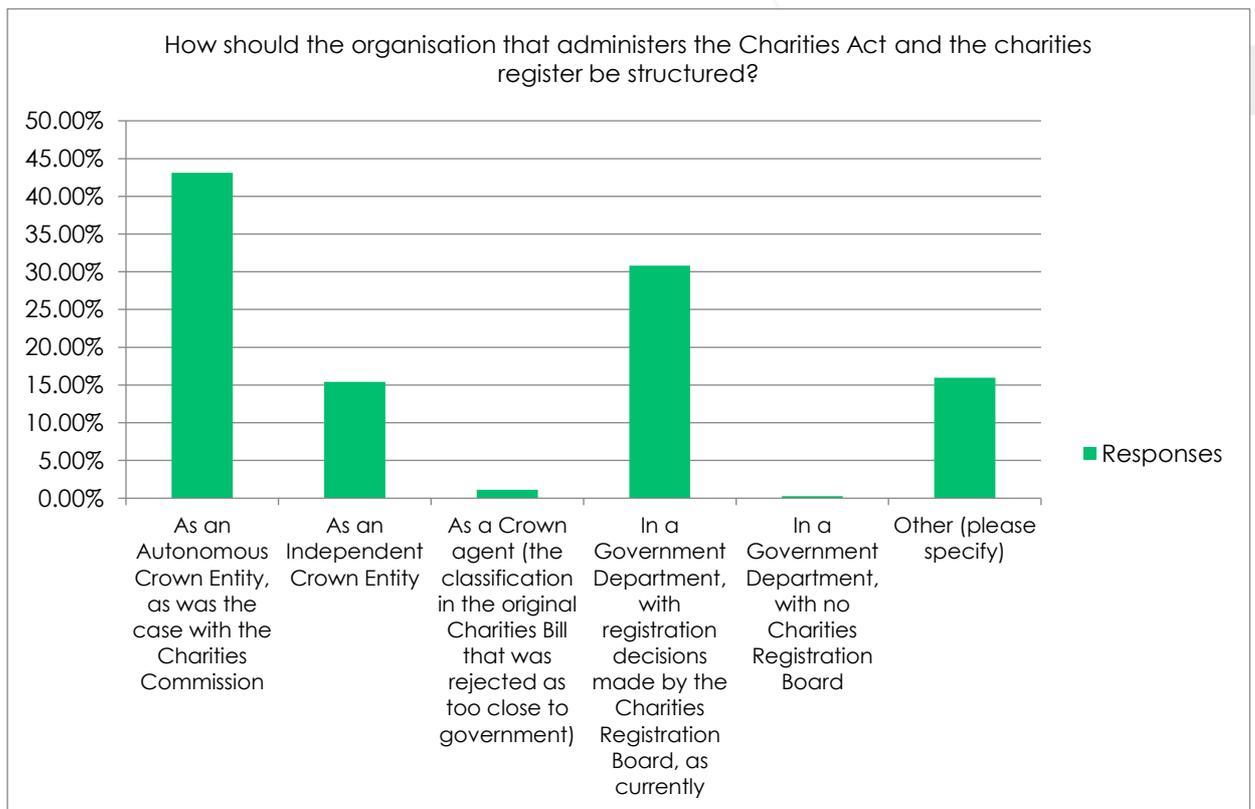


Table 4 Q31

### Appeal decisions

Question 26 asked respondents (n285) to consider the process to appeal decisions of Charities Services. A majority (44%) indicated they found process somewhat fair, 30% thought it was very fair, 7% extremely fair, while 20% considered the appeal decisions to be unfair to extremely unfair.

When asked to explain the things that are fair or unfair in appeal decisions, respondents raised concerns in relation to the mechanisms, process of appeal, timing, bias, and costs.

*The limited time is ridiculous the process is not feasible for many charities and is therefore unjust. (ID# 10544840462)*

*It seems there is a political bias in some of the CRB's actions!! (ID# 10557082980)*

*So far it has seemed that the appeal process is fully internal. An appeals process should allow for an external board to reconsider what charities services has decided. An appeal should require a different set of people, not the same people reconsidering their own decision. (ID# 10559688604)*

*Charities operate on limited funds and to challenge requires time and generally advice. Many can't afford it. (ID# 10537680844)*

Question 29 asked respondents *Would it be helpful for charities to be able to access an independent specialist Charity Tribunal, along the lines of the Taxation Review Authority?* 83% (n294) indicated it would be helpful.

### Purpose and content of the publicly accessible charities register

Respondents (n379) indicated they would likely look for each of these types of information on the charities register in Q34. Looking for a charity's legal name was the most frequently sought-after information.

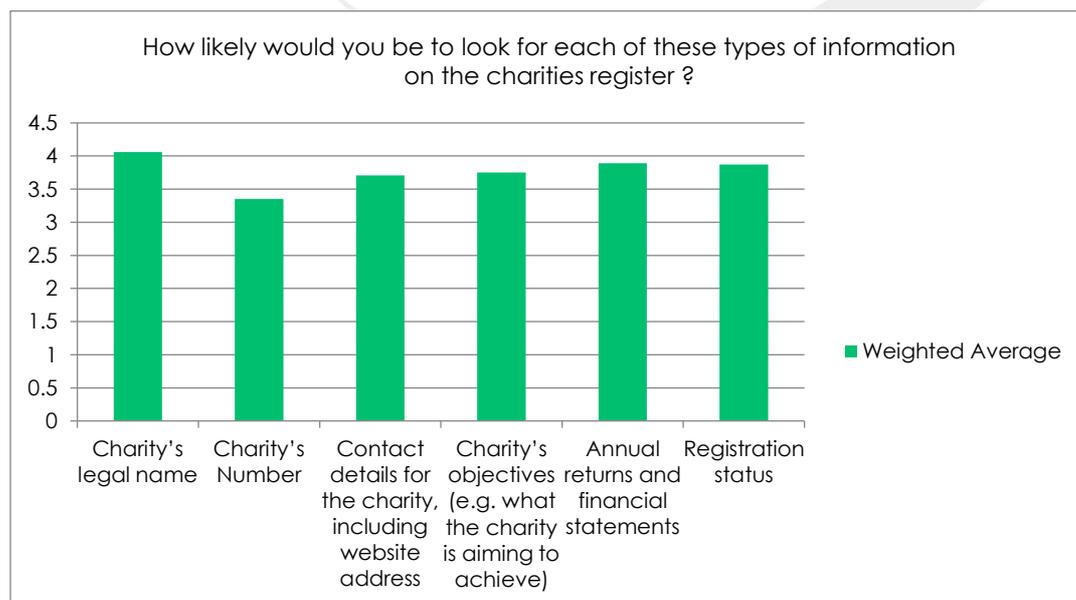


Table 5 Q34

87% of respondents (n378) in Q35 agreed or strongly agreed the publicly accessible charities register helps to enable greater public trust and confidence in charities in New Zealand. When asked to explain why, respondents' answers (n128) highlighted several concerns or assumptions about the purpose and content of the publicly accessible charities register including;

- General public's knowledge and use of the register
- Accountability and transparency for charities
- Concern over the number of charities not registered, and
- The need for privacy for some charities, namely for Women's Refuge or Mental Health Advocacy

*I am not sure that many members of the general public are aware of the register and its uses. (ID#10362160733)*

*It is vital that charities are open and transparent. Reporting data on the register provides a high level of accountability. (ID# 10366929979)*

*It's of concern that there seemingly are numerous charities not registered, which seems to dilute the effectiveness of this aspect. (ID#10560380246)*

*It would be great if the register could contain funders as well as charities. And for these funders to have access to Charities' data, so the information doesn't have to be duplicated to each funder (ID# 10371006705)*

### Funding for the Government monitoring agency

Respondents (n373) overwhelmingly thought the most appropriate source of funding for DIA Charities Services/the Charities Registration Board to administer the Charities Act 2005 was either Funded by a mix of fees and the Crown (43%) or Funded by the Crown (40%).

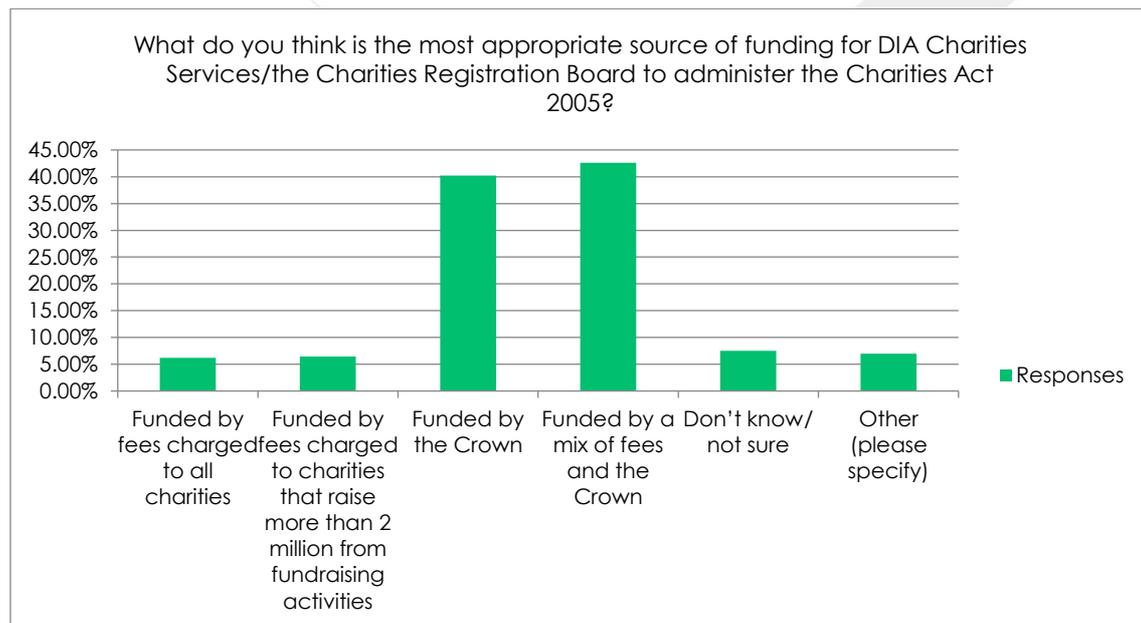


Table 6 Q33

Responses (n26) to explain their answer to Q33 can be grouped in three core themes including,

- Fees charged on a sliding scale by charity tier
- Unnecessary service, or not a service to the charities
- Funded by Government so charities can contribute funds to their mission

*Sliding scale of fees based on Tier plus crown (ID# 10397020443)*

*Why is it called a "Service"? It does not supply a service to our organisation, to our community - is it a service to Govt? to Compliance?? (ID# 10494488322)*

*Deserving Charities exist for a worthwhile purpose of public good service delivery. They capture huge free labour from the public and this allows successive Governments to escape having to fund service delivery for needy causes. It's therefore only fair that the Government does its bit to provide the regulatory environment for the sector. (ID# 10407583645)*

### Offences and penalties.

Question 28 sought qualitative explanation of participants' responses (n256) to Q27, *Would any of the following alternatives to deregistration under the Charities Act be useful?*

In relation to offences and penalties many respondents supported leniency in issuing offences and penalties. Some reflected that where it is appropriate, charities should be given a chance to fix any issues or suggested freezing assets until issues are resolved. There was strong perception that a consequence for wrongdoing must be in place, whether this was in the form of a sanction or fine.

*When dealing with charities, we are talking non-profit organisations who generally need every single cent they can gather to fund the good work they are doing. In most instances I would imagine deregistration or imposing sanctions would be a big enough penalty for those who are being supported by the charities. "Blood out of stone" scenario. If there was something seriously untoward surely there would be legal avenues for prosecution? (ID# 10383067747)*

*I believe withholding any public funding until issues are sorted would be better than fines. If they do not have Govt contracts with public funding, then interim sanctions and fines may work. (ID# 10382888761)*

*"Charities" that are taking advantage of the system are usually set up to make someone money without ever performing a charitable act. If they can simply deregister without penalty then they have just ripped people off without consequence. (ID# 10393678679)*

### **Registration and deregistration**

This section responds to the substantive policy matters within the scope of the review pertaining to registration and deregistration, not already highlighted.

3. Matters relating to registration and deregistration

- a) Registration requirements (not including the definition of 'charitable purpose'), and the ability to backdate the registration of an entity;
- b) Deregistration requirements;
- c) The extent to which businesses that solely raise funds for registered charities can register under the Act; and
- d) The extent to which registered charities can advocate for their causes and points of view.

The survey included 6 items related to these matters including, Q18, Q24, Q25, Q27, Q 30, Q32.

Question 18 asked respondents to rate their satisfaction with the process of registration. The majority indicated not knowing. A larger percent indicated being neither satisfied nor dissatisfied, or satisfied (somewhat or very) Table 8.

How satisfied were you with the process of applying for registration?

Answered: 461 Skipped: 117

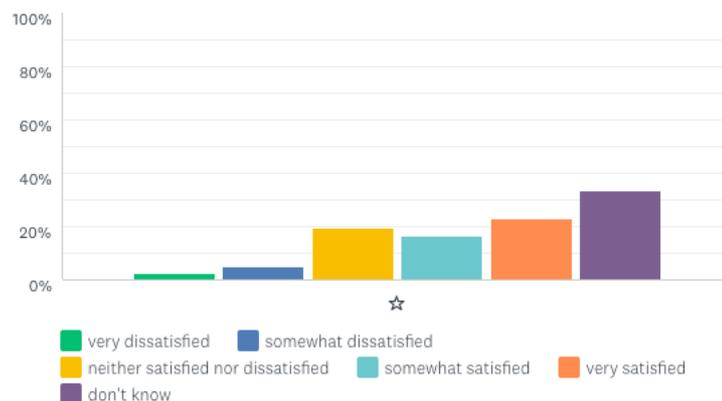


Table 7 Q18

### Registration requirements

Respondents representing Tier3 & Tier4 charities were more likely to express concerns with the registration requirements of the Act, particularly if the organisation relied on volunteer staffing. A need was evident for the DIA to actively support smaller charities through the registration process.

*I can think of very little usefulness that the Charities Commission can offer for small charities which are run by volunteers, and I have no wish to spend my volunteer time completing bureaucratic forms for high paid Charities Com staff (ID# 10397269121)*

*We would like Charities Services to work cooperatively with our trust towards the aim of being registered. (ID#10391424278)*

*Being registered adds validity to our organisation which is acceptable to the public. (ID#10394037222)*

Concerns were expressed throughout the survey in relation to businesses obtaining registration as a charity, integrity of charitable functioning by some organisations and tax implications related to being a charity.

Registration however, was mostly seen as positive and supportive of good practices and governance. Being a registered charity allows donors to claim tax rebates and was understood as enabling organisations to apply for grants. Several respondents put forward suggestions to help smaller or new charities meet the registration requirements through mentoring or networking with larger organisations.

*Supporting umbrella status from mature charities especially to start-up organisations so that they can get their organisational and governance framework underway while doing the operational aspects they set up to do. (ID# 10383090246)*

*As a result of being unable to obtain charitable status, the Government had to pay a \$6.1m tax bill to the IRD, then amend the 2007 tax law to enable our organisation to achieve income tax exemption. This highlights the poor decision by the DIA when reviewing our application and deregistering us. (ID# 10380067788)*

*I believe the Charities Act needs to be considered in the wider context of freedom of association, relationships to commercial activity (particularly when the charity is a front for what is a cluster of businesses e.g. PHOs), and the integrity of legal persons more generally. (ID# 10363422779)*

Respondents' reasons for not being registered include costs, compliance and narrow criteria, unnecessary administration burden, lack of knowledge of the requirements, or other.

### *Deregistration*

Only one respondent to the survey indicated their organisation had been deregistered (Q10), the reason provided was a lack of advantage for the organisation being registered. In response to another question a respondent stated *My charity was deregistered for failure to file our annual return, suspension [would be preferable] to ease reregistration needed (ID# 10376803640).*

Six respondents indicated registration was refused (Q10). Reasons for refusal included the organisation undertaking advocacy activities, or not meeting criteria as public benefit (Q16).

*When we received a second rejection we felt that Charities Services produced no new convincing reason in support of its decision to decline registration. We feel that Charities Services has misinterpreted the Act and ignored recent case law regarding public benefit that is supportive of our application. In practice it appears that Charities Services are very reluctant to grant charitable status, and routinely decline applications for registrations despite the merit of the applicants. (ID# 10391424278)*

*Charities often have a lack of resources which means they can make mistakes or not comply. A stepped approach to enforcement would be better (ID# 10508844850)*

Respondents indicated the deregistration requirements needed to be 'fair' and involve a 'warning system' rather than a 'sledgehammer' approach. In response to Q27 (Table 9) the majority specified interim

sanctions as an alternative to deregistration. Education was seen as a necessary step in deregistration requirements, in which charities had time to address breaches and become compliant.

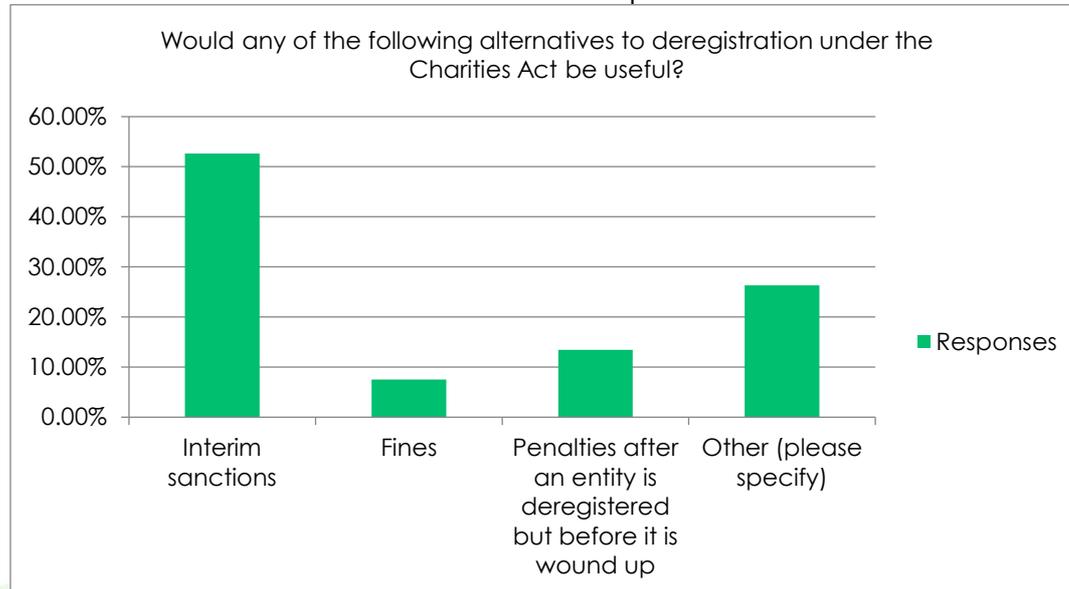


Table 8 Q27

In the open responses to question 27, respondents offered a range of views related to deregistration including;

- *De-register hobby-groups and other insignificant charities, especially if they serve a small number of people. Challenge duplication (same/similar service targeting same people). (ID# 10425343384)*
- *Publish a list of deregistered charities with reason(s) why. (ID# 10393859486)*
- *If a charity has evolved into something else to remain viable, sanctions/fines may not be applicable. If it has deliberately used the status to avoid paying taxes and seek funding, that is something that should be strongly discouraged. (ID# 10493991984)*

#### Extent to which registered charities can advocate

Question 30 directly asked *Does being a registered charity influence your group or organisation's capacity to advocate for their causes and points of view?* Of the n369, nearly 60% considered registration to be moderately or very influential on their capacity to advocate.

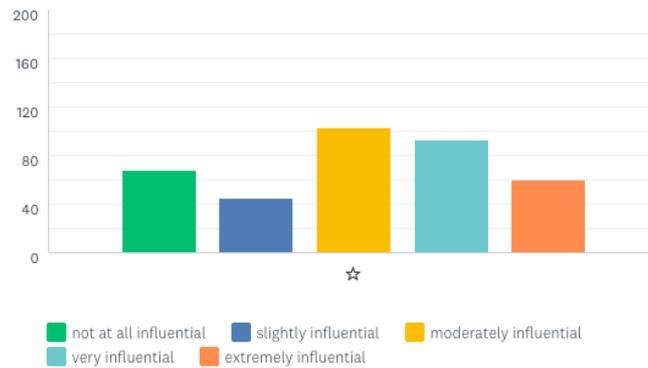
*We're not sure how much lobbying we could do (ID# 10538201496)*

*Clarification around what qualifies as advocacy, political advocacy, and guidelines around how it should, or how to measure, it's worth to your charitable purpose. (ID# 10391575155)*

*We believe being charitable requires us to advocate for the addressing of the causes of problems that impact the people we work with. Applying a bandaid without addressing the thing that causes the problem is just stupid in the long term. (ID#10544840462)*

Does being a registered charity influence your group or organisation's capacity to advocate for their causes and points of view?

Answered: 369 Skipped: 209



Many stated that registered charities are not able to advocate for their causes and points of view. Firm views were expressed as to being able to advocate for charitable causes as a necessary activity. Many felt current definitions of advocacy in relation to registration requirements negatively impacts the core work of charitable organisations in New Zealand.

*Advocacy is part of being a charity it needs to be protected in law. (ID#10370848118)*

*I am concerned that the Act limits the function of charities to undertake some functions e.g. advocacy, which could be seen as limiting the voice of charities wishing to advocate on behalf of their communities. I agree that charities should be able to operate businesses to raise funds to be used for charitable purposes, this also relates to the lack of any legal structures for social enterprises. I do not think the reporting requirements are too 'over the top' even though some charities struggle to comply. (ID#10526166595)*

### **Obligations of registered charities**

#### 4. Matters relating to the obligations of registered charities

- a) The obligations of registered charities; and
- b) The obligations of individuals on governance boards and in senior management roles in registered charities, including looking into governance standards for registered charities.

The survey included 3 items (Q36, Q37, Q38) related to the above matters.

Question 36 asked respondents to rate their awareness of the obligations of registered charities under the Charities Act 2005. On a scale of zero (not aware at all) to ten (fully informed) the weighted average was 7.3, indicating most respondents are well informed of the obligations of registered charities.

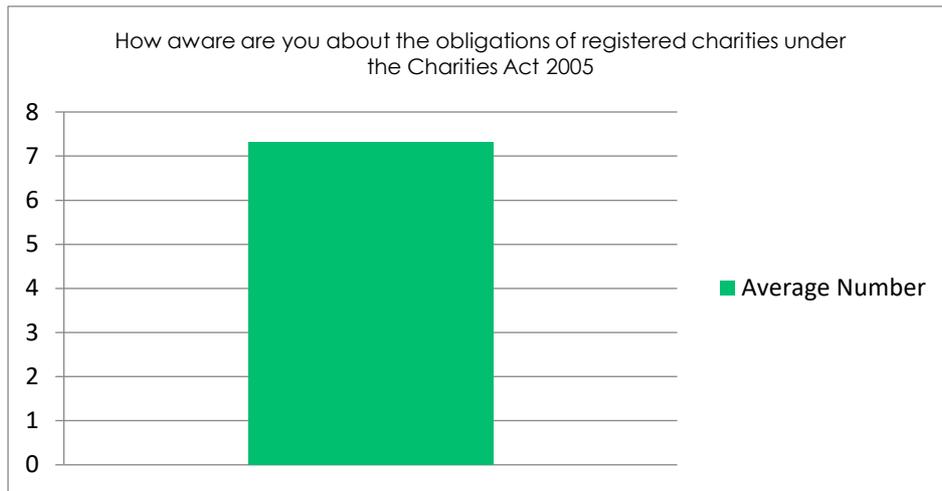


Table 9 Q36

In question 37 respondents rated their agreement to two statements (Table 11). *In the future, the Statement of Service Performance reports will improve your organisation's internal governance and reporting* -159 either agreed or strongly agreed. n126 neither agreed nor disagreed, and n92 disagreed or strongly disagreed. The weighted average was 2.79. *In the future, stakeholders, funders and the public will refer to the Statement of Service Performance when they make their funding decisions*- The weighted average was lower at 2.5 weighted average.

### Rate your agreement with the following statements

Answered: 378 Skipped: 200

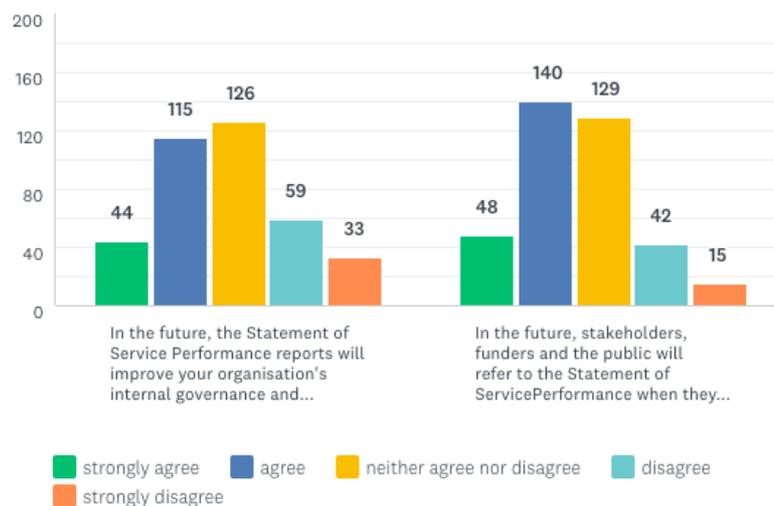


Table 10 Question 37

More than half of the respondents agreed to some degree that the Statement of Service Performance reports impact governance and stakeholder decisions.

*The current compliance procedures required of small entities are completely contrary to the information provided before the legislation was enacted. (ID# 10379639465)*

*The cost of preparing our consolidated performance report and then auditing this report is financially crippling our organisation. There are less funds to be used for the community and keeping the organisation viable, and more going to large auditing firms in order to ensure we remain registered as a charity. The XRB report format did not take into account that treasurers of small charitable organisations are not accountants nor in some cases financially literate yet they manage small amounts well overseen by the membership. All hell breaks loose when they have to report in the terminology of the Charities Services return. How this can be encapsulated in the legislation I know not!. (ID# 10366939301)*

*Like many other administrative reforms I think a Statement of Service Performance is a great concept but there is no evidence that these documents guide funding - either by funders or from public. (ID# 10409499705).*

Relative to the obligations of registered charities Service Performance reports have a significant impact on the obligations and governance of charitable organisations.

Many respondents expressed concerns related to governance standards and suggested requirements for

*I strongly believe in holding the person or people behind wrongful acts and omissions carried out by an organisation (company, society, etc) personally liable. (ID# 10531402135)*

boards to undertake governance education, the provision of mentoring and for DIA support for best practice. Some indicated that individuals should be held accountable for wrongful acts. Others suggested DIA services should apply a varied approach that reflects the income and infrastructure of the organisation to help charities meet their obligations.

### **The interface**

5. Links to other legislation
  - a) The interface between the provisions of the Act, and provisions in the Incorporated Societies Act 1908 (and proposed Incorporated Societies Bill), Charitable Trusts Act 1957 and the Trusts Bill (with the aim of better alignment).

*Charity services needs to take leadership in aspects of developing education and frameworks for charities, CEO's and Trustees like the loD does in the corporate sector. Governance is essential but the tools / capability development isn't there at an affordable level for the sector (they can't afford loD course rates / consulting costs etc). Suggest partner with loD to pull on their excellent resources at a cost model that works for Tier 1 to Tier 4 charities.. (ID# 1046780781)*

Question 38 sought additional feedback on the Act and legislation. n145 responses covered many aspects within scope of the Charities Act (2005) review. Regarding legislation and the interface between Acts, respondents highlighted the necessity for simpler processes to support New Zealand's rich philanthropic position.

*It would be nice to know the difference between a trust and a foundation. (ID# 10369406268)*

- *It is important that the Act can be effectively implemented by all parties without excessive onus. The reporting criteria is important with respect to compliance but don't make it so hard that smaller, and effective, charities can't bear the cost of compliance. Remember that the majority of charities are bona-fide and are working to support our society in the absence of support from central government. Work with the sector and engage the sector in a far more rigorous manner before making decisions about its future. New Zealand is an extremely philanthropic nation and it is unethical that donated dollars are used to meet overzealous compliance requirements. (ID# 10391450988)*
- *Charities exist because gaps always form in public policy where the most vulnerable fall. If legislation drives too much standardisation, it will open more gaps. It is not a charity's role in a society to satisfy society as a whole. (ID# 10367130271)*
- *There needs to be better links to other legislation that impacts (charities). Current CS restrictions undermine community organisations' role. Our role should be able to move forward issues in the community. Charities should be able to exercise freedom of speech and allow debate over issues in a democracy. Currently there is no appetite for dissenting voices CS needs to be more accountable to the public. (ID# 10367036031)*

## 5. Conclusion

The Charity Sector has provided feedback through the mechanism of a national survey. A range of substantive issues have been raised in relation to the Matters within scope of the Charities Act (2005) review. Analysis of the data from the survey identified a range of implications to be considered to ensure the Act is fit for purpose. The charity sector's views, attitudes and confidence in the Charities Act 2005, are clustered around six themes related to the scope of the Charities Act (2005) review. These are:

### 1. Purpose of the ACT

- The three most relevant activities by the independent Charities Registration Board and the Department of Internal Affairs to charities included:
    - Promote public trust and confidence in the charitable sector
    - Educate and assist charities in relation to matters of good governance and management
    - Compile and maintain the charities register
  - Additional purposes of the Act should encourage alignment and collaboration amongst charities to reduce duplication
  - Charities Services should undertake research and advance best practice in the sector
2. Education and support
- Charities Services should educate and support professionalism in the sector and encourage best practice
  - Charities Services should actively research, collect, analyse and publish data on best practice for the charitable sector
  - It is necessary to provide guidance, guidelines and assistance around the legal requirements for charities; greater recognition and acknowledgement of the contributions of charities; and build governance capacity of the sector.
  - Education is a necessary step in registration/deregistration requirements
3. Informed and knowledgeable
- Respondents to the survey indicated they were only somewhat informed of the Charities Act 2005
  - Most respondents indicated the benefits of being a registered charitable organisation outweigh the costs. Many felt the level of public trust and confidence in the charitable sector has an impact on the way their group or organisation is perceived.
  - Interpretation of the Act is setting unnecessary barriers to registration
  - The general public's knowledge and use of the register should be improved
4. Definitions of charitable purpose and advocacy
- Respondents indicated greater or expanded definition/clarification of charitable purpose, charitable benefit and status are required
  - DIA could/should play a role to reduce duplication of charities by supporting alignment collaboration, and umbrella or collective networks
  - Greater clarification of what constitutes advocacy and political advocacy is needed

#### 5. Reporting and Administration

- Reporting, and administration requirements for registration are problematic for Tier 3 & 4 charities
- Process and administration practices could be streamlined between government departments and simplified, particularly in relation to registered charities obligations and reporting requirements
- The Charities Act should be administered by an Autonomous Crown Entity, as was the case with the Charities Commission
- The most appropriate source of funding for DIA Charities Services/the Charities Registration Board to administer the Charities Act 2005 was either Funded by a mix of fees and the Crown or Funded by the Crown
- Respondents supported leniency in issuing offences and penalties

#### 6. Registration

- Smaller charities were more likely to have issues with the registration processes
- DIA needs to actively support smaller charities through the registration process
- Respondent's reason for not being registered include costs, compliance and narrow criteria, unnecessary administration burden, lack of knowledge of the requirements, or other.

## Appendix A

### [Independent Community Consultation To Inform The Review Of The Charities Act \(2005\) Survey Questions](#)

**Appendix B**[Independent Community Consultation To Inform The Review Of The Charities Act \(2005\) Survey Data](#)