



auckland north community  
and development

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To: Charities Act Team  
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**Submission: The Review of the Charities Act 2005**

ANCAD hosted a workshop in Takapuna, 20 March on the Charities Act Review (2005) at the Mary Thomas Centre on behalf of the Department of Internal Affairs (DIA). Over 100 people attended the workshop. We acknowledge the effort that DIA have gone to hold numerous community meetings around the country.

ANCAD is an incorporated society governed by a Board. It was formed in 1974 and incorporated in 1979. It is a lead organisation in the community sector in Auckland North, with 150 plus member organisations. Within the mosaic of community development activity ANCAD connects, facilitates, inspires and drives community action designed to build community and improve quality of life for local residents. ANCAD is a respected and trusted partner of central government, local government, local businesses and community sector organisations. We run the largest community database and network meetings in north Auckland and possibly across the region. ANCAD celebrates 45 years of serving communities this year.

ANCAD acknowledges the work of Sue Barker and Dave Henderson and has drawn from their work "Develop a Community-led Response to the Review of the Charities Act 2005".

### **The Timing of the Review**

The review of the Charities Act (2005) is an important opportunity for the charitable sector to create a world class framework of charity law in New Zealand. More than 27,000 registered charities contribute enormously to communities. Charities spend around 17 billion annually, manage \$58 billion in total assets and are supported by more than 230,000 volunteers and 180,000 paid staff. It is a very important sector for New Zealand.

The discussion document has faced some criticism in being too narrowly defined and does not permit a broader discussion. There is concern that this review is being rushed through and we will not get an Act that is ‘fit for purpose’. It has been 13 years since the Charities Act was passed. It has been subject to a series of amendments sometimes rushed through under urgency without proper consultation and against opposition from the community sector. A long-promised review of the Charities Act promised a **‘first principles review’** of the legislation, including updating the definition of ‘charitable purpose’. This is not included in this review.

The government wants the review to be completed within this term of office, including the revised legislation. This will require all initial policy work to be finished by mid 2019. There is concern that this timeframe is too short. More time is needed to both get the framework right and to carry out the comprehensive review required for the legislative framework. A process similar to that for the Law Commission’s review of the Incorporated Societies Act (1908) and trusts is recommended.

On one level we should try to make the most of the review in the limited time available. However, many of the issues involved in this area of law are complex, and it seems unlikely that we will create the best possible framework and policy, which is both required and urgently needed.

### **The scope of the review**

It is questionable what the purpose of the Act is or should be, and this is outside of the scope of this review. There needs to be a closer look at what we are trying to achieve with the Charities Act and why. We know that charities engaged in money laundering, tax avoidance and criminal activity should be ‘weeded out’ so that the public can have trust and confidence in those that remain. However, how this is done and what the controls around this are need to be closely looked at.

How can you look if something is ‘fit for purpose’ when you don’t know what the purpose is? ANCAD recommends a comprehensive legislative first principles review of the Act. It needs to be ascertained whether other additional purposes need to be considered. It is essential that community organisations get engaged with the review and have their say

Many community agencies opposed the disestablishment of the Charities Commission some years ago. The Commission had more independence than the current structure, which is a section within the Department of Internal Affairs. We would prefer to see an independent crown entity which government has no power to direct. A stand alone or autonomous Crown agency still must give effect to direction from the Minister.

When the Charities Commission was disestablished, two objectives were tacked on as additional purposes of the legislation. These were ‘promoting public trust and confidence in the charitable sector’ and ‘promoting the effective use of charitable resources’. At face value

these appear worthy purposes but in actuality some see these as a driver for Charities Services to impose greater controls on the sector (Sue Barker and Dave Henderson). These purposes have been rejected overseas in similar legislation and are seen to represent 'regulatory over-reach' (Australia and the UK).

An Independent Advisory Board should be established to advise the Government on policy and advance the interests of the charitable sector.

### **Government Monitoring and the Appeals Process**

We would like to advocate for lesser control by government over sector activities and services to the public, taking into account other important legislation. Reviewing and monitoring the quality and progress of activities over time is important to ensure the best possible impact for communities. However, we need to be careful about the power to influence or direct the behaviour of organisations that might prevent community advocacy where it is needed. The nature of government monitoring of charities must fit with the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *UN Human Rights Council* and the *NZ Bill of Rights Act (1990)*.

Currently, appeals of Charities Services decisions must go to the High Court within 20 working days. There seems to be uncertainty about whether organisations can appeal decisions of Charities Services, and also whether Charities can present evidence in support of the appeal.

We would like to recommend an independent Charity Tribunal and that the Charity has the ability to present evidence to support its appeal. Charities should be given the opportunity to appeal all decisions. We would also like to see 'judicial specialisation' for charities law.

### **Advocacy**

Advocacy has become an almost banished word from our work across the sector. No community organisation wants to be struck off the register for the necessary advocacy work required in the community. Charities are strongly aware what happened with Greenpeace and the National Council of Women and have become cautious about language in their promotional material and activities.

We strongly advocate that one of the key roles of community groups is to move issues forward in society and contribute opinions and perspectives on needed changes. Debate should be encouraged. To restrict this form of advocacy is detrimental especially for those marginalised who have little ability to provide their own voices to needed change. We do not support party political advocacy, (charities need to be non-partisan) or any form of 'hate advocacy', so there should be some restrictions around these kinds of advocacy.

### **Qualification of Officers**

We would like to make the case that sometimes it is useful and advantageous to have 'lived experience' on Boards. For example, ex-prisoners who have turned their lives around. Charitable organisations working in the area of justice or who support former inmates could benefit having officers that have 'lived experience' of being a prisoner.

ANCAD recommends exploring the ability of having some discretion around the disqualification criteria in certain cases.

### **Business income and social enterprise**

Social Enterprise is an important part of ANCAD's income, as it is for many other community organisations. It is very useful for administrative operational purposes as it isn't tagged to a particular project. It has become much harder to obtain overhead administrative funding in recent years. This income is directly put back into the organisation to further our charitable purpose, with no individual person receiving any profit. This income assists in making ANCAD financially sustainable. ANCAD would like to see the term 'social enterprise' used in legislation and be validated and supported as legitimate income. ANCAD is uncertain of charities that undertake business activities that are unrelated to their charitable purpose and what restrictions need to be placed on this.

We are of the view however, that it is not Charities Services role to manage the business risk of charities. Governance best practice or governance standards can be introduced that will provide the framework, obligations and remedies to deal with the management and accountability of risk.

### **Reporting Requirements**

As statistics show, many small charities struggle to meet annual reporting requirements. Charities are often set up to meet a specific need in the community or arise out of a passion to offer a service or activity. People skilled at providing the service but may not have a financial background and therefore may struggle with the reporting. ANCAD has observed the professionalisation of the sector over the last few years. ANCAD has responded to this by developing the Auckland Community Accounting, in conjunction with Massey University, a free service that offers support to charities so they can meet their reporting requirements.

ANCAD sees the advantage of charities now requiring to tell their story to the public and not just report financials. This gives better accountability and understanding of the sector.

ANCAD prefers we do not reduce the reporting requirements for the sector. With support and guidance, the sector can gain the experience required for the necessary annual reporting.

### **Accumulation of Funds**

Good practice for charities is to set aside funds to deal with both expected and unexpected events. Charities need to have enough funds to cover an unexpected loss in income as well as the full amount needed for a potential closure to ensure all liabilities are covered. Some charities are in the position of having significant reserves and, through bequests and other activity, are able to add to these reserves on an annual basis.

The discussion document asks whether reserves strategies should be transparent and published as part of reporting and whether certain charities should be required to distribute a certain portion of their reserves annually. A charity may have quite legitimate reasons for building reserves.

ANCAD's view is that governance standards or best practice guidelines should contain sufficient obligations on charities to manage reserves activity without additional reporting requirements.

### **Governance Standards**

Governance standards is another step in the 'professionalisation' of the sector. A set of governance standards informed by sector best practice would ensure that charities apply services and methods appropriate for their clients and activities. It would ensure that systems are compatible and comparable. However, best practice guidelines may be preferable to standardisation. We do not want to see a 'big stick' or another 'hoop' for charities to jump through.

Best practice guidelines (preferably), or the setting of governance standards would assist charities to be more effective and provide useful guidance around operations and policy development. They would provide a framework for necessary obligations hence minimising external controls.

### **Disclosure of third party funders**

Whether third party fundraiser costs should be disclosed is discussed in the *Discussion Document*. Some charities outsource fundraising to third parties, some resource 'in-house' and some do both. There is concern that disclosure of outsourcing of the fundraising effort could lower confidence in an organisation or ultimately in the sector. Disclosure could also

drive fundraising 'in-house', which may not be as efficient or there may not be the same capability in-house to achieve desired results and to ensure financial viability.

Charities should be left to regulate and monitor their own costs of fundraising. Good governance practices should result in the most efficient processes being sought.

Yours sincerely

Yvonne Powley  
**Chief Executive Officer**