

Date: 30 May 2019

To: Department of Internal Affairs

From: Birthright New Zealand

SUBMISSION: Charities Act Review

1. About Birthright New Zealand

Birthright New Zealand is a registered charity. Birthright has been operating in New Zealand as a national organisation for over 60 years. We work to strengthen and enrich the lives of children and families. We specialise in working with families led by one person. Our vision is for nurtured, resilient, inspired children and families.

Birthright New Zealand is a charitable trust with 11 affiliate organisations throughout NZ who deliver a variety of social services to children and their families. Each of the 11 affiliate organisations are also registered charities. These organisations work with families with a wide variety of needs. They assess needs, provide social work services, and in some locations, counselling services and early childhood education. We work closely with other community service providers to ensure children and families who need support can access appropriate services.

2. Introduction

We welcome the review of the Charities Act and thank you for the opportunity to provide input.

The Charities Act impacts so many citizens in their day-to-day interaction in the community. It might be sport and recreation, education, social services, the environment, health, religion, to name a few where the organisation/club they connect with, or are employed by, is a registered charity. Given the importance the sector plays to so many citizens life it is essential adequate attention is given to an important piece of legislation that can impact the well-being of the fabric of our society.

The Charities Act enables charitable organisations, such as Birthright, to continue to be recognised and valued for the work they do as a charitable organisation. It also contributes to our ability to deliver on our charitable purposes as the people we support rely on a wide range of community organisations for their well-being and participation in their local communities.

We must ensure the review that is undertaken is comprehensive and respects the importance and role of today's contemporary charities working in our community. We do not feel the current review is broad enough or of an independent enough nature to do justice to the level of review required. The recommendations outlined in this submission highlight the areas we believe need further emphasis.

3. Recommendations

We believe the current review is not giving the recognition this important piece of legislation requires. It is essential sufficient time and consideration is given to make sure the review has fully considered the diverse nature of the sector. The law must enable charitable organisations to effectively carry out their work and not work against them in anyway.

We have three high level recommendations:

1. The Law Commission be appointed to complete a full and comprehensive independent review of the Charities Act.
2. Ensure advocacy work for charitable purpose is an allowable activity under the Act.
3. Establish a proper appeal process for Charities to access if they wish to appeal any decisions made by Charities Services.

4. Specific Comment

The Law Commission be appointed to complete a full and comprehensive independent review of the Charities Act.

The review of the Charities Act is being compromised by an attempt to quickly reach resolution within the current term of Government. As pointed out changes to the Act can have significant impact on the well-being of our communities. The current review is too narrow and not independent.

The process followed for the review of the Incorporated Societies Act which used the Law Commission to conduct a full and independent review was well received by the sector. The same level of commitment should be given to the Charities Act and the Law Commission appointed as an independent body to complete the review.

In 2012 the Charities Commission was decommissioned, and Charities Services created under the Department of Internal Affairs. This was the result of a similar poorly planned and non-consultative process that failed to consider the full impact of such a change. We should not repeat the mistakes of 2012.

A full and comprehensive review would begin with understanding the purpose of the Charities Act. It is important we come back to the original purpose and define what is required in order to create a flourishing and effective charity sector. Too often in recent years the interpretation appears to move more towards control by government rather than the wellbeing of the sector and public trust and confidence. Establishing purpose will enable a clear framework for the independent review.

Ensure advocacy work for charitable purpose is an allowable activity under the Act. Advocacy is an important component of organisations' such as Birthright carrying out their charitable purpose. Advocacy is an activity we carry out to further our charitable purpose, not our purpose. We should not fear deregistration as a result of our advocacy work. The communities we support rely on the formal structures provided by organisations' to raise and advocate for change in relation to the barriers they face. Sometimes this advocacy work is at an individual level, other times it is at a more systemic level.

If we could not advocate, or feared loss of charitable status as a result of advocating, then we would fail to meet our charitable purpose (the relief of poverty and the advancement of education for families, particularly those led by one person).

Charities Services current interpretation of advocacy is highly subjective. We need to ensure the Act is clear on advocacy being permissible as an activity that furthers an organisation's charitable purpose.

Establish a proper appeal process for Charities to access if they wish to appeal any decisions made by Charities Services.

The ability to appeal any decision made by Charities Services is currently very limited. We should be able to appeal any decision made under the Charities Act, not just those related to registration and deregistration.

Charities are unable to access justice under the current framework. Charities need to be able to access an oral hearing of evidence like everybody else.

The Attorney-General should be involved in Charities Act litigation in a capacity of *parens patriae*, the "protector of charities", as is the case in England and Wales. This will ensure the definition of charitable purpose is looked after and developed correctly.

5. Conclusion

Birthright New Zealand is pleased to see the Charities Act is being reviewed, however we do not believe the parameters of the review and timeframes given to the review are adequate to do this important piece of legislation justice.

We hope the concerns expressed by the sector are listened to and a thorough and independent review is undertaken by the Law Commission. This review should consider the purpose of the Act and establish a legal framework that seeks to strengthen and enable the charitable sector, rather than "police" and "control".

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