Submission on the Charities Amendment Bill

1. The Fundraising Institute of New Zealand (FINZ) is a voluntary, self-regulating peak body representing people and organisations engaged in the process of raising funds in support of the work and mission of charitable and community organisations in Aotearoa New Zealand. Detail pertaining to the work and mission of the Institute is appended to this submission as Schedule A. This submission is from the Institute and does not necessarily mirror the views of all Members.

2. The Institute has been actively involved in forums and discussions throughout the review process that has culminated in the presentation and passing of the first reading of the Charities Amendment Bill. The Institute has also maintained a cooperative relationship with the Department of Internal Affairs (DIA) and Charities Services (CS) on a number of fronts during that period.

3. Notwithstanding our relationships with DIA and CS, FINZ is opposed to the passage of this Bill – a stance we have consistently held since 2018, as evidenced by:

   - Our participation in the consultation meetings held in 2019
   - A joint FINZ/Public Fundraising Regulatory Association (PFRA) submission in 2019
   - Formal submissions to DIA in response to the rounds of specified questions in 2021
   - Participation in the Charities Sector Group sponsored by CS.

4. FINZ opposition to the passing of this Bill is based on it being bad law. Unintended consequences of the Charities Act 2005 will be worsened more than improved under proposed changes in the Charities Amendment Bill (as will be detailed further in this submission). We believe that this Bill if passed, will be to the benefit of civil service rather than civil society.

5. It is unconscionable that a Labour Government is sponsoring this Bill when in 2017 (following enactment of the Charities Bill in 2005 and amendments in 2012) the Party's manifesto stated that Labour will:

   - *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 purposes*.

Neither of these declarations have come to pass and no reason has been given for them not having done so. Indeed, we are somewhat astounded to read the following Departmental disclosure statement (DIS) claim in Part One: General Policy statement, sub-section "Context" (Para 2) – "*The fundamental principles of the Charities Act (including the definition of charitable purpose) are considered sound and fit for purpose."*

According to who? Not according to:

- "Tax and Charities – a government document on taxation issues relating to charities and non-profit bodies" by Hon Michael Cullen, Hon Paul Swain and John Wright MP, (ISBN 0-478-10343-3), Part II, "The relevance of the definition of charitable purpose" 2001
- The Labour Party Manifesto of 2017
- The Law Society, in its letter to Minister Hon Peeni Henare of 4 February 2019

And, not according to FINZ.

FINZ urges the Social Services and Community Select Committee to recommend to Parliament that progress of this Bill be halted forthwith and a first-principles review be undertaken by an independent body.

6. In respect of the Bill, we note the statement "*The objective of the Bill is to make practical changes to support charities to continue their vital contribution to community wellbeing, while ensuring that contribution is sufficiently transparent to interested parties and the public*." (DIS, P3, para 2)

FINZ acknowledges that some changes may be helpful. Our concern however, is that these changes are being proposed in isolation of a solid, defensible base of a sound framework of charities law. The current Act is an inadequate litmus test for arguing for change.

Our submission comments below focus on identifying our concerns with the proposed legislative changes to The Charities Act 2005 being proposed in this Bill.

a. Definition of an Officer (Section 4)

The proposed Clause 4.1 definition of an Officer in relation to a charitable entity

a. Means a person who able to exercise significant influence over the management or administration of an entity;
b. Includes, but is not limited to –
  i. in relation to the trustee of a trust, any of those trustees:
  ii. in relation to any other entity, a member of the Board or governing body of the entity if it has a Board or governing body
c. Excludes any class or classes of persons that are declared by regulations not to be officers for the purpose of this Act

FINZ submits that this definition is unworkable. Use of the term in Clause 4.1(a) '*significant influence*' is a loose subjective term, unless done in a generic

manner… it is unworkable and should be removed. Clause 4.1(a) could conceivably mean as proposed, a Chief Executive (or equivalent) whether they have voting powers on the Board or Committee or other governing body or any other staff or volunteer who can '*exercise significant influence over the management or administration of an entity'* with 4.1.(b) only indicating "*includes, but is not limited to'* making that confusion significant. The remainder (including Section 36) then focuses solely on defining who is disqualified from being an Officer.

b. (Clause 12 a) Chief Executive to consult on significant guidelines or recommendations

We acknowledge that DIA and CS have both facilitated consultation, as exampled by the creation of a Core Reference Group and processes undertaken in relation to development of this legislation in 2019 and again in 2021; and establishment of a CS sponsored Charities Sector Group. Unfortunately, we conclude that the processes that have been undertaken have largely been a process of accepting those opinions that have been consistent with Departmental preferences and discarding opposing views. The Charities Sector Group, which is supposed to meet quarterly, has only been convened once this year.

FINZ has little faith in the calibre of consultation and consider the proposed clause as it stands to be relatively meaningless.

c. (Clause 18) Chief Executive to consider application

FINZ wishes to challenge why the Chief executive has any powers to consider application when there is an independent Registration Board established for that purpose? The Clause perpetuates the observation that it is the staff of the Department who make determinations of registration, thus diluting the intended independence of the Registration Board.

d. (Clause 22 of The Charities Act 2005) Purpose of Register

We regrettably note no proposed change to this Clause.

It distresses FINZ that this Clause is solely focused on what an individual might discover about a Registered Charity and fails to acknowledge or recognise the value to the wider sector of macro level understanding of the sector or any of the seventeen sub-sectors within it by which entity information is categorised.

The reporting data regime that applied up until 2016 provided some basis for analysing data that was helpful in feeding back to the sector in our Institute's endeavours to assist organisations better understand their fundraising practices and processes. The changes that applied in 2016 eviscerated any ability to do that. FINZ can find no evidence that we were consulted on those 2016 changes and would have strongly advocated for greater granularity of reporting both revenue and expenses.

We shall comment on the proposed changes to Clause 41 below but preface those comments by signalling our displeasure at those proposed changes.

e. (Clause 32) Grounds for removal from the entity

We are concerned to note no proposed change to this clause.

Clause 32.3 states *"Subsection (2) does not limit the circumstances in which an entity may be considered to be no longer qualified for registration as a charitable entity."* We have been concerned for some time that this sub-clause has become legitimised as the basis for sanctioning, criticising or causing effect on a Registered Charity that advocates and/or lobbies on issues even where such advocating and/or lobbying is consistent with the purpose of the Charity's existence. We are concerned that the proposed section 13.a will codify that intention.

We consider that this is fundamentally dangerous. In the absence of specific safeguards in respect of advocating and lobbying, we wish to bring this potential risk to the Select Committee's attention. We strongly argue to advocate and/or lobby on matters consistent with a Registered Charity's purpose be enshrined as a fundamental right. We regret the continuing absence of clarification.

f. (Part 2, Sub-part 1a, Clauses 36a to 36d) Officers of charitable entities

We refer to our comments in section 6.a of our submission. These clauses are heavy on who is disqualified to be an Officer but fail to help clarify the limitations of those persons who need to be defined as Officers – inadvertently including persons who are not mandated to be Officers by their charitable entity.

g. (Clauses 41, 42AB and 42AC) Duty to prepare annual return, etc

We accept the proposed statement but wish to make the Select Committee aware of our displeasure at the proposed changes in financial reporting. In our recent submission to the External Reporting Board (XRB), we made the following submission in relation to the question posed in their consultation document:

> ***Do you agree with the proposal to reduce reporting requirements for 'small' Tier 4 NFP entities?***
>
> *No. It amounts to pandering. Please do not interpret our comment as being unsympathetic to small charities. Our Institute puts a lot of time, effort and resource into assisting small charities. We do so willingly and at some financial cost to our Institute. We understand the difficulties of small charities and demonstrably do our bit. But, by diluting reporting requirements, we jeopardise the integrity of being able to view the entire sector and trends within it.*

Relevant excerpts from our submission to the XRB are attached as schedule B to this submission. It provides a more fulsome explanation of our stance and recommendations and we urge the Select Committee to read it.

h. (Clause 42G) Duty to review governance procedures

FINZ is unaware of any consultation on this proposed clause. There also appears to be no definition as to what constitute 'governance processes' so for the purposes of our comments, we assume this to mean the governing legal document (Trust Deed, Constitution, etc).

While we do not object to the intent of this Clause, we question its inclusion as worded. On one hand it can be argued that the clause constrains organisations from reviewing its governance procedures more than once annually, even if practicalities dictate some change(s) might be warranted on an earlier basis.

On the other hand, bearing in mind that governance procedures always need to be consistent with

- organisational purpose
- the requirements of The Act
- appropriate organisational practices (and vice versa – that practices are aligned to governance processes)

we are left wondering both what this Clause might mean in practice and the consequences of not reviewing annually.

We are conscious of situations where Registered Charities may be legitimately constrained from being able to make change, such as:

- subordinate entities to a group entity
- Charities whose legal framework is defined in legislation pertaining to that entity
- Unincorporated societies, etc.

We recommend to the Select Committee that this clause not proceed without consultation.

i. (Clause 55A,a,i) A decision under section 25(1) to remove or omit from the register any information or documents that relate to a charitable entity

FINZ registers strong objection to the allowance of removal of information or documents relating to a charitable entity without there being a robust, independent and defensible process for making such decisions. We go so far as to object to the financial information relating to a charitable entity able to be withheld (see our Clause 6.d above). All Registered Charities enjoy legislative taxation privileges. If the government is determined in being consistent and true to the intention "*that contribution is sufficiently transparent to interested parties and the public*" (DIS, P3, para 2) then it is only fair and reasonable that all information relating to a charity be discoverable – unless and only if, there is a robust, independent and defensible process to apply as an exception. We would further advocate that the process should not be simply delegated to the Chief Executive but to independent assessment.

j. (Part 2A) Appeals

FINZ wishes to advocate that this entire section is unwieldy and contrary to the principles of partnership and cooperation, being hallmarks of the sector.

The development of the whole framework within which charities law has come to be housed in recent decades, deliberately acknowledges and makes more visible all dimensions of the modern operating environment for charities. Tucking the above-mentioned appeals process back under the wing of a body primarily concerned with taxation, sends the wrong signal and is a retrograde step for both Government and the Charitable Sector. How exactly does the proposed move provide greater access to justice?

Given that there is an attempt in this Bill to ease the pressures and constraints on small Charities, there needs to be consistency in respect of this appeals process.

Our preferred process would be:

- An appeal be initially allowed to a sub-group of the Core Reference Group, elected from within that group, to receive and consider any matter whereupon there is a desire by a charitable entity to appeal any decision made by Charities Services whether through the Chief Executive (or by delegation) or the Registration Board to enable representation by both parties to achieve reasonable consensus; with elevation to an Authority required only necessary where a consensus decision is not able to be reasonably achieved
- Clause 58P be amended to include all reasonable legal costs associated with an appeal to an authority to ensure that small charities are not disadvantaged
- Legal process be minimised, meaning that much of Part 2 be simplified to better reflect the way that the sector works and less about the way that the country's judicial system works.

7. In summary, we oppose this Bill and encourage the Social Services and Community Select Committee to recommend cessation of its passage in favour of the consistently previous preference for a first principles review. Our comments in 6(j) above demonstrate the extent to which this Bill represents legislative compliance above achieving a constructive relationship between the Crown and the charitable and voluntary sector.

We respectfully seek opportunity to speak to our submission.

For further information:

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Schedule A: The Fundraising Institute of New Zealand

There has been a professional institute associated with fundraising in New Zealand for forty years. Beginning as a Chapter of The Australasian Institute of Fundraising in 1983, it morphed into Fundraising New Zealand in 1990. The Institute has member categories (Individual, Organisational, Business supplier, Honorary) with all Members bound by the Institute's codes of Ethics and Professional conduct.

Current membership encompasses in excess of 2000 individuals working for or with charities in New Zealand to raise funds for legitimate charitable purpose.

The Institute's current mission is

To inspire, create and strengthen
confidence in giving and generosity across
Aotearoa New Zealand that leads to positive impact.

As the mission implies, we are not about the doers (fundraising professionals) or fundraising (benefitting organisations). We are about inspiring confidence in philanthropy and giving. Of course, we can only do that by upskilling fundraising professionals to aspire to achieving effective and efficient fundraising and by working with charities to improve understanding of the fundraising process – a people business, not a money business (monies raise being but a barometer measure of the health of relationships with donors and supporters).

Our subscription system is tiered and based on annual reported fundraising revenue, But importantly, it includes free membership to small start-up charities to enable them to access training and other membership benefits.

The work of the Institute is divided into four pillars:

- Ethics
- Advocacy
- Education
- Sustainability

For further details please refer to www.finz.org.nz

Schedule B: Excerpts from submission to the External Reporting Board on proposed changes to Tier 3 and Tier 4 requirements

Round 1 - Section A: Reporting requirements for small Charities

It is the opinion of FINZ that standard reporting should be required at all levels as a condition of registration, notwithstanding increasing levels of detail from Tier 4 to Tier 1.

(Q1) FINZ does not agree that current reporting obligations (as expressed) are disproportionate to the level of transparency and accountability needed from small Charities. Our rationale here is:

There is no compulsion for any charity or community organisation to seek registration under the Charities Act 2005. Organisations primarily seek Registered Charity status for purpose of:

- *facilitating the ease with which the group/entity is able to attract grants, donations and other revenue where donors/grantors either require that status as a prerequisite to being considered for a gift or grant; or accepting that registered Charities status is a sufficient bono fide to warrant support in its efforts*
- *benefitting from tax advantages granted to organisations and entities with Registered Charities status.*

The discussion document "Modernising the Charities Act 2005" states on page 9 "Knowing that charities are registered and regulated also drives public trust and confidence." Dilution of reporting and accountability diminishes that intent.

In his Foreword to the same discussion document, then Minister Peene Henare stated "An Act that is working well for charities, the regulator, and the public will help ensure that the charities' sector is as effective as possible and enjoys the trust and confidence of the public." Proposed changes in reporting and accountability may well work for the charities and the regulator … but not necessarily the trust and confidence of the public.

Irrespective of the size of a registered Charity, some measure of accountability is expected by donors, grantors or the conditions that arise from their legal framework (eg, Incorporated Societies Act). Neither donors nor grantors will automatically change their expectations based on organisational size. Registered Charity status should provide assurance that the entity abides by a standard accountability regime.

Round 2 - Section B: Charities Regulator compliance and enforcement powers

21. (Q3)FINZ supports increasing monitoring both compliance with charitable purpose and the accuracy of performance reporting by both Registered Charities and the accuracy of data uploaded into the database. These all contribute to the perception and reality of the integrity

of 'the system' in relation to Parliament's intentions and expectations when the legislation was enacted.

Our primary concern with differentiation of reporting requirements is the dilution of 'whole of sector' detail. It leads to the situation where the only reliable 'whole of sector' financial data comes down to:

- Total revenue
- Total expenses
- Balance sheet/bank account net accumulation.

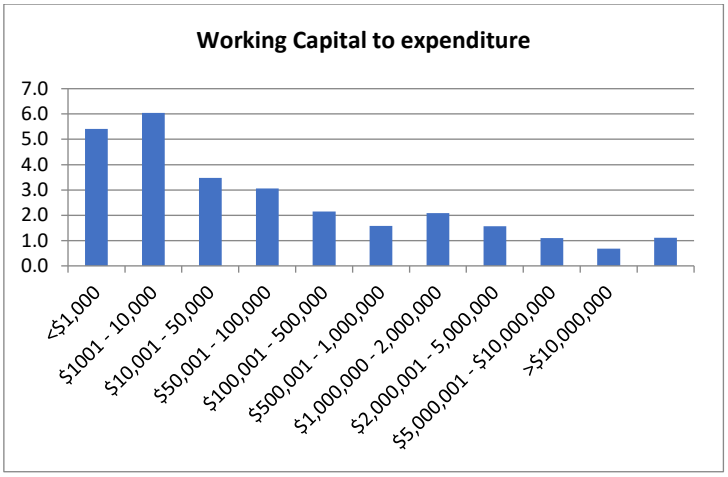
Meaningful visibility is being increasingly lost. The impact of this is demonstrated in our comments in Clause 6 below.

Tier 3 changes

Q 9. Do you agree with the proposals to require an entity to provide enhanced note disclosure that explains the purpose for which accumulated funds are held?

No. The moment this is imposed, judgements will be made by others beyond 'users.' Users have unfettered ability now to question the charity directly. This proposal has the prospect of the information being supplied to be used by for example, IRD, as a basis for formulating regulatory requirements. Please do not interpret our response to being anti-transparency or against accountability. Our Institute is constantly encouraging Boards and organisations to unlock their convertible assets for investment in fundraising activity, as the graph below from recognised UK based fundraising and philanthropy leading thought expert, Alan Clayton demonstrates:

It is the nature of the work of our Institute and its Members to most commonly deal with Boards who fail to invest in fundraising – the very thing that would best assist in the ultimate achievement of mission. This is particularly so of Tier 3 and 4 organisations. An analysis from the Charities Services database undertaken in 2016 showed how many years of working capital was available as a proportion of annual expenditure for various sized charities':



Source: Project Periscope Ltd

Tier 4 changes

Q1. Do you agree with the proposed simplifications to the Tier 4 (NFP) Standard?

No. As citizens, we are required by law to submit annual tax returns. There is no separation by earnings level. Charities should be no different. If a group elects to register, they should accept the associated obligations. As we have indicated in clause 3 above, there should be no impediment to the accumulation of total sector financial data. The dumbing down of reporting requirements impedes the ability of attaining a 'whole of sector' view. If the governors of an organisation are incapable of providing full disclosure, it questions competency. Full standardised disclosure should be mandatory. We recognize the need for some organisations to be able to access assistance in some circumstances but to change the process for all for the sake of a few is unfortunate and undesirable.

Q2. Do you agree with the proposal to reduce reporting requirements for 'small' Tier 4 NFP entities?

No. It amounts to pandering. Please do not interpret our comment as being unsympathetic to small charities. Our Institute puts a lot of time, effort and resource into assisting small charities. We do so willingly and at some financial cost to our Institute. We understand the difficulties of small charities and demonstrably do our bit. But, by diluting reporting requirements, we jeopardise the integrity of being able to view the entire sector and trends within it.

Q9. Do you have any other comments on the proposals to simplify and improve the reporting requirements for Tier4 NFP entities?

As citizens, IRD does not provide means to simplify our reporting requirements as individuals or Company Directors. It is obligatory, with consequences if we do not comply. The same should apply to charities. There are consequences of not meeting the obligations that should apply to receiving the benefits of registration.

We interpret these efforts to simplify as a consequence of non-compliance. If so, the solution lies in application of the rules, up to an including deregistration. The application of differing standards provides Charities Services with the ability to shirk responsibilities they should be fulfilling.

Income and expenditure reporting

a. Income

Up until 2016 it was possible to analyse and track:

- Grants and sponsorship
- Bequests
- Donations and Koha
- Membership fees.

Our disappointment was that we were unable to also track other fundraising, such as events, merchandising and other transactional style fundraising. We would also have preferred to see grants and sponsorship split so that those activities could have been tracked as well.

We were dismayed to discover the 2016 changes. We were unable to find any evidence that our Institute was consulted on the changes and somewhat aghast that the consultation documents made public on the XRB web-site were predominantly (by a wide margin) only from large Accountancy businesses.

It was largely from the identification of bequest income that our Institute facilitated the establishment of a separate trust "Include a Charity" to follow suit on equivalent programmes internationally to encourage people to leave a gift in their Will to charity. The cessation of reporting of bequest income stymied our ability to track the impact of that initiative, undertaken at some considerable cost to benefit the entire charity sector.

We note the move in Tier 3 to reinstate some level of segregated reporting on income streams and we applaud that initiative. However, as stated in Clause 4, Q7 above, we do not consider the proposed changes to go far enough.

We would encourage XRB to broaden its reporting requirements across all Tiers so that there is clarity to trends and movements in fundraising performance that can be tracked and used to educate and inform Charities – a role we believe we have some responsibility for as part of our education role.
Our recommended categories would include:

- Donations and koha
- Grants (we would prefer other revenue source splits above separation of grants into capital and operational)
- Bequests
- Sponsorship (we assume that this is not able to include gifts in kind but would value any move to make this visible)
- Other fundraising (including events, merchandising and other GSTable fundraising transaction activity)
- Membership fees.

ENDS