

## **Response from the Fundraising Institute of New Zealand (FINZ) to DIA Policy Group questions**

- i. FINZ is at a loss on face value to see the nexus between the review of the Charities Act and the current focus on reporting, accumulation of assets and/or Charities operating businesses. Despite that, the following is respectfully submitted.
- ii. The document below represents the response from only a small proportion of the FINZ membership, due to the tight turn-around timeframe required to respond to the questions
- iii. FINZ represents the fundraising industry in New Zealand with membership embracing over 2000 paid and volunteer fundraising personnel. Organisational membership includes organisations that span all four tiers of Registered Charities.

### **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.*

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.

2. (Option 2) (Q4) The question “*what are some of the ways that would be useful and easy for **you** to complete and meet current reporting requirements?*” sets the stage for the majority of the questions and carries with it a tantamount underlying theme equivalent to asking Turkeys if they think that Christmas celebrations should be withdrawn. Of course, no-one likes having to comply with accountability and reporting obligations. These questions so worded, in effect, lead the witness. There is an alternative if reporting as part of being a Registered Charity is too difficult – deregister.

There is a reasonable question to ask whether groups establishing or operating a Registered Charity without a modicum of accounting and accountability expertise should in fact be entrusted with the benefits of registration under the Charities Act 2005 if they are unable or unwilling to comply with the obligations of registration.

3. (Option 3) FINZ fully supports improving the knowledge and skills of those responsible for governing Registered Charities. At any one time, it is reported that there are around 160,000 New Zealanders in a Registered Charity governance role (around 4% of the New Zealand adult population). One has to ask how they know how to actually perform their role ... let alone know the tips of the trade as it were. FINZ believes that education is beyond the sole scope of Charities Services and should embrace a joint involvement of sector groups and Peak bodies.
  
4. (Option 4) (Q10) FINZ can support some level of change to reporting. The concern held by FINZ is that it is macro-level data that is used to track organisational performance for the purposes of reporting back to Members and as a basis for education programmes and advocacy work. The accuracy and usefulness of the data now available is significantly lost from the aggregating the reporting of fundraising data in particular. It has become further confused by the application of differing reporting templates available to small Charities.

A prime purpose of the Charities Act 2005 was and is to allow members of the public to be able to access information on any registered Charity. Unfortunately, opportunity was lost, particularly after the XRB driven reporting changes in 2016, for the data published by Registered Charities to be used for sector or sub-sector performance and trending analysis. That means that while the purpose is being achieved at a micro level, it fails at the macro level.

The incompleteness of reporting data is ably demonstrated in our consideration of the question of Charities accumulating funds with the table below clearly showing the yawning gap that exists that prevents complete statistical or trend analysis.

	Number in group	Average Gross Income	Average reported Reserves	Average reported Equity	Reserves to Average Gross Income	Equity to Average Gross Income
Total all Organisations	24,846	\$952,443				
Reserves sub- set	2,835	\$3,901,046	\$4,887,136		1.3	
Equity sub-set	10,730	\$2,078,230		\$5,119,181		2.5

Source: See Appendix

The above table shows that although the records of 24,846 registered Charities were sourced, only 2,835 of those Charities reported any Reserves and only 10,730 reported any Equity in their latest submitted performance report. That means it would have been fallacious to simply divide reported Reserves (or Equity) by the total average gross income of 24,846 organisations. Had that been the path pursued, it would have indicated that across the entire sector the average of all Reserves amounted to 5.1 years annual income equivalent; and Equity equivalent to 5.4 years' worth of annual income.

The absence of complete reporting data means that assumptions are made that may not hold true.

- (Option 5) FINZ fully endorses the establishment of an advisory committee to 'participate and advise' on the XRB standards, XRB template and Charities Services guidance material. As FINZ was not consulted in the 2016 reporting changes and has been impacted by those changes, we would strongly urge inclusion of a representative on such an advisory group.

## Section B: Accumulation of funds by Registered Charities

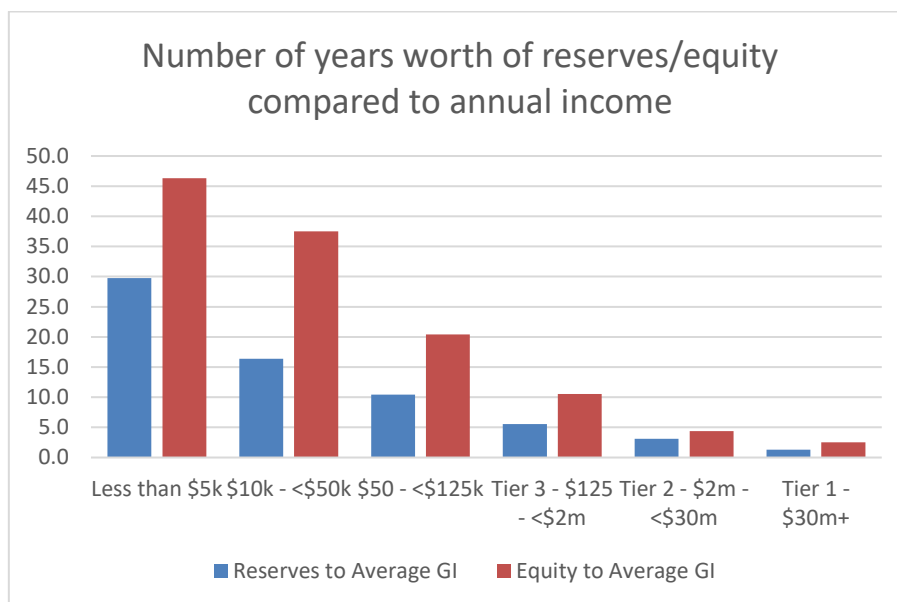
*FINZ rejects any suggestion that accumulated funds be limited.*

1. (Q1) FINZ agrees that public not knowing if, when and how fundraising charities will distribute their funds is potentially problematic. However, that is not synonymous with levels of accumulated funds. A basic principle of fundraising is that people will give to a “cause” and continue to give to the cause to the extent they are satisfied that their contribution is being used for the purpose(s) for which it was/is given. From a fundraising perspective, if an organisation has passed the test of charitability and been granted status as a Registered Charity ... and if the organisation is able to attract significant funds to use both now, and in the future, then the level of accumulated funds (as in Reserves and Equity) should be irrelevant.

Of a far greater concern from a FINZ perspective is the number of Registered Charities with woefully inadequate reserves. Those with too little run the risk of failing; and where that happens that can result in the contributions from Trusts, the public and/or other funders being rendered useless. That in turn can result in donors being more likely to be ‘turned off.’

Funds are hard to accumulate in a start-up or small organisation. One assessment discovered that 37% of all Charities had the equivalent of less than 3 months’ worth of operating expenditure – 12% with less than 1 month and 5% with less than two weeks! That is sailing very close to the wind, especially if revenue is not consistent or predictable.

2. (Q2) FINZ does not believe that there should be any specific focus on accumulated funds. The differences that currently exist between Tier 1 and Tier 4 Charities demonstrates one aspect of the problem of trying to develop specific rules. The graph below (with Tier 4 entities split into three groups) portrays the ratios of average Reserves to annual income; and average Equity to annual income, across a range of annual income brackets. The data table is detailed as an Appendix.



Source: Charities database.

Grant-making and contract fee paying entities (eg, LGB, COGS, Trusts and Foundations, or local or central Government) have a right to dictate the terms of their support or contribution. However, when these are based on calculated levels of accumulated funds, many decisions are made on purely subjective, and often personal bases.

3. (Option 1) (Q3) FINZ believes that the current status should be retained. FINZ would argue that the only determinant as to whether a Registered Charity has excessive Reserves or Equity, is whether that Charity is being true to its mission. If donors or funders are unhappy with the level of accumulated funds being retained, they will simply choose to not contribute any further.
4. (Option 2). FINZ fully supports any reasonable and rational approach to educate Charities. Guidelines are likely to be helpful.

5. (Option 3) (Q6) The changed reporting standards introduced for the 2016 reporting year required far more detailed reporting on balance sheet information (including reserves) than that required previously. For the majority of Registered Charities, that change was an overkill. However, FINZ acknowledges that there are Registered Charities for whom that level of teasing out is legitimate and appropriate. On balance, if simplification is not feasible, then maintenance of the status quo should continue.
6. (Option 3) (Q8) FINZ agrees that there are problems being able to observe levels of accumulated funds across all Tiers, thus skewing sector-wide data at the macro level. FINZ believes that there should be consistency in reporting on at least basic elements of balance sheet information, with levels of detail simply increasing from Tier 3 up to Tier 1.
7. (Option 3) (Q10). Reporting should be standard and consistent, albeit, with increasing levels of Balance Sheet detail between Tier levels, as outlined above.
8. (Option 4) (Q11) FINZ believes that requiring Registered Charities to provide a funding distribution plan is both unnecessary and undesirable. All FINZ Members are required to abide by Codes of Ethics and Professional Conduct, which includes expectations that align with providing *“clear reports about the work they do, the way donations are managed and disbursed, and costs and expenses in an accurate and clear manner.”*

Most funders already have mechanisms in place for seeking and receiving information of this nature and all donors are at liberty to request it from any Registered Charity.

9. (Option 4) (Q13) FINZ agrees that funds donated should be able to re-invested in the fundraising entity. To put in place a mechanism that prevents that comes dangerously close to reinforcing the notion that every dollar donated is applied to

the end-purpose, thus perpetuating the myth that fundraising itself does not incur a cost.

10. (Option 4) (Q14) The consequence to any Registered Charity that fails to openly and transparently demonstrate how funds are distributed is likely to result in declines to contribute to the Charity's fundraising endeavours. That in itself, is a checks and balance mechanism. It also separates any concerns from how the entity uses the funds from any concerns of malfeasance, or dishonesty, which is an entirely different matter.
  
11. (Option 5) (Q15) It is the opinion of FINZ that requiring Registered Charities to abide by minimum distribution requirements is not feasible due to two factors:
  - If Registered Charities abide by minimum distribution requirements when in fact they would otherwise have been reasonably expected to distribute more, then there will be no mechanism for rectifying that situation, thus rendering the value of such a minimum requirement counterproductive.
  - The Deed of a Charitable Trust may require the capital to be retained in ways that are contrary to a minimum distribution requirement, thus placing Trustees in a compromising position of being required by law to act in a way contrary to a requirements and expectations of the Settlor.

FINZ Believes that such a requirement would generate unintended consequences that would potentially create other problems.

12. (Option 5) (Q17, 18) The use of any indicator is to use an artificial and arbitrary point in time to impose a requirement. The prospect of manipulation arises. Problems are also likely to arise where such a requirement contradicts a Deed of Trust, with the likelihood that loopholes would undoubtedly be sought, discovered, and used, thus rendering the whole purpose unworkable.



## Part C: Charities with business activities

*FINZ submits that the employment of business practices to assist with augmenting funding of the work of a Charity should be unfettered as there is an explicit requirement that no net surpluses can be used for anything other than public benefit.*

1. (Option 1) (Q3) FINZ supports the utilisation of business activities as a mechanism for raising funds to be applied to charitable purposes. Whether that be by way of activity undertaken by the Charity itself or through an independent entity whose sole purpose is to distribute net earnings to the Charity is irrelevant.

In the case of a Registered Charity wishing to establish a business entity, One or more board members (or an executive) of the charity should be ex officio directors of the business There should also be provision for Board members to be paid for their time and expertise, to ensure maximisation of profits for the recipient entity.

2. (Option 2) (Q6) FINZ submits that it should not be the Registration Board formally approving their approach to the treatment of business activities. Such an action would in effect give the Board the ability to determine what is or is not acceptable from a registration perspective which runs the risk of being modified over time as the Board sees fit. It is the FINZ understanding that case law is emerging on issues that included reference to business activities undertaken by Charities. It is that case law that in our opinion should form the basis of the practice of Charities Services in general and the Registration Board in particular.
3. (Option 3) (Q12) FINZ submits that providing information that forms the basis of Charities Services processes that is clear, understandable, and consistent with emerging case law is to be encouraged.

4. (Q15) How can a non-profit entity make a private profit? Doesn't registration as a Charity require no distribution of profits?

As stated, FINZ submits that such businesses must be able to operate either as an integral part of the Charity or as a separate operating entity, providing that the business, if a separate entity, abides by the charitable dictates described in law. FINZ further submits that it should be legitimate for a separate trading entity carrying on business to the ultimate benefit of the Charity's charitable purpose should include ability to pay for professional Board services to ensure that entity governance achieves maximisation of profits to be applied to the charitable purpose of the Charity. To prevent that would potentially result in businesses failing to optimise their commercial activity and thereby failing to achieve the business' primary purpose.

5. (Q18) It is not a requirement of a private company to publish its financial results. To require the business of a Charity to publish financial results would be contrary to that principle. FINZ submits that the more important report to be published will be the extent to which funds are passed from the business to the beneficiary. To that extent, consolidated accounts are likely to prove counter-productive.

6. (Q20) From a FINZ perspective, any business activity conducted either by the Charity itself or a separately incorporated Registered Charity, normal commercial risk will inevitably apply. So long as decisions that result in losses have not been reckless, then such losses are potentially inevitable and certainly not illegal.

**Appendix: Tables for calculation of Reserves and Equity to annual income**

Reserves and equity averages to Gross Income							
	Number in group	Average Gross Income	Average reported Reserves	Average reported Equity		Reserves to Average GI	Equity to Average GI
Reported Gross income							
Less than \$5k	3,452	1,954					
	35	2,423	72,156			29.8	
	359	1,961		90,885			46.3
\$5k - <\$10k	2,045	7,297					
	25	9,965	162,959			16.4	
	258	7,432		278,647			37.5
\$10k - <\$50k	7,053	25,963					
	211	28,307	295,440			10.4	
	1,319	27,748		566,588			20.4
\$50 - <\$125k	4,062	80,883					
	323	120,299	669,526			5.6	
	1,385	85,074		894,491			10.5
<b>Tier 3 - \$125 - &lt;\$2m</b>							
	6,952	494,056					
	1,723	576,511	1,789,153			3.1	
	6,160	517,546		2,274,313			4.4
<b>Tier 2 - \$2m - &lt;\$30m</b>							
	1,193	6,655,259					
	471	6,849,939	8,843,790			1.3	
	1,149	6,703,734		16,819,185			2.5
<b>Tier 1 - \$30m+</b>							
	96	123,830,769					
	45	139,789,490	140,193,521			1.0	
	93	125,652,150		208,538,943			1.7
<b>Total all Organisations</b>							
	24,846	952,443					
	2,835	3,901,046	4,887,136			1.3	
	10,730	2,078,230		5,119,181			2.5