Te Tari Taiwhenua
Internal Affairs

Modernising the Charities Act 2005

We want your views on charities accumulating funds

Tēnā koe. This document seeks input from targeted stakeholders on initial options to improve transparency around charities accumulating and distributing funds. Your views will help us to refine the options and understand what they might mean for you or the charities you represent.

Background

Accumulating funds is an important way for charities to do good work in their communities

There are many valid reasons for charities to accumulate funds. Submitters to the 2019 discussion document told us that some accumulation is necessary and demonstrates good governance practice. Supporting charities to maintain good governance and financial practices is important.

Fundraising charities may not further charitable purpose until they distribute accumulated funds

Charitable purpose can be granted to organisations that exist for certain purposes and meet certain requirements. This includes organisations that "do" charitable purpose (they directly further charitable purpose through their activities), those that generate funds to support their own or others charity (fundraising charities), and those that do a bit of both.

Fundraising charities are diverse and include small community groups through to larger entities like private foundations and charitable businesses that donate their profits. Like other charities, fundraising charities have good reasons to accumulate funds. However, if they are not also "doing" charitable activity, they do not further charitable purpose until they distributed funding.

Problem: a lack of transparency on when and how fundraising charities will further charitable purpose

Because of the annual reporting requirements that apply to all charities, there is good information on the amount of funds held by fundraising charities. However, it is not clear from this information why funds are being accumulated, and how and when the funding will be distributed to charitable purpose. This is a problem because it undermines public trust and confidence in the charitable sector.

Some submitters in 2019 suggested that the reserves reporting standards for Tier 1 to 3 charities provides enough information on accumulated funds. However, even if a charity is accumulating funds or has funds reserved for a specific purpose, this does not mean it must be reported as reserves.

We think there is a need to improve transparency on charitable distribution by fundraising charities, while continuing to support and encourage them to continue their valued contributions in our communities.

Questions:

1. Do you agree that the public not knowing if, when and how fundraising charities will distribute their funds is a problem? Why or why not?
2. Do you think this problem matters for all types of fundraising charities? For example, should we focus on charities of a certain size/expenditure (e.g. Tier 1 vs Tier 4); certain types (e.g. private foundations, businesses); or with certain arrangements (e.g. not iwi charities that have membership accountability and distribution policies)?

Initial policy options

We would like to hear your views on a range of options that could address the problem

We have developed a range of potential options that could address the problem. Some of these were raised in the 2019 discussion document but did not focus on fundraising charities. The options under development are:

Option 1: No change;

Option 2: Charities Services develops best practice guidance on maintaining charitable purpose;

Option 3: Require fundraising charities to report reasons for accumulated funds in their annual return;

Option 4: Require fundraising charities to have a funding distribution plan;

Option 5: Require fundraising charities to distribute five per cent of their assets per annum.

Below we describe each option and propose some questions for you.

Option 1: No change

There is an option not to make changes and maintain the current state. This is our baseline for assessing other options. It will not address the problem we have identified.

Question:

3. Do you think we should maintain the current state? Why or why not?

Option 2: Guidance from Charities Services

Charities Services have functions under section 10 of the Charities Act 2005 to educate and assist charities, including issuing guidelines or recommendations. Charities Services could develop guidelines for all charities on maintaining charitable purpose. While this is unlikely to improve transparency, it could encourage good distribution practices.

Questions:

4. How will this option impact your charity or the charities you represent? How will it change behaviour?
5. Would the guidance need to reflect the diverse perspectives of different fundraising charities? For example, iwi charities, private foundations, small community trusts?

Option 3: Requirement to report more about accumulated funds in annual return

Under the current reporting requirements, there is no single number across all charities that provides a consistent view of what funds have been accumulated. This is because charities can report and calculate funds differently. For some charities "equity" may be the best representation of accumulation of funds, but for others this may be "reserves" or "accumulated funds".

This option would require all fundraising charities to consistently report, in their annual return, the amount of accumulated funds they hold and the reasons for those funds. While this will not increase transparency of funding distribution, it will provide the public context on the charity's funding accumulation.

Questions:

6. Will this option address the problem by improving transparency of how fundraising charities distribute funds?
7. How will this option impact your charity or the charities you represent?
8. Should the new reporting requirement be part of the financial statement instead of the annual return?
9. Should the accounting standards for reporting reserves be changed instead?

10. Should all fundraising charities be subject to this requirement, or just certain ones? Or should all charities have to report this information?

Option 4: Requirement to provide funding distribution plan

This option would require all fundraising charities to provide and maintain a distribution plan. The plan would need to set out when and how much funding will be distributed to charitable purpose. Providing a distribution plan could be a new registration requirement, or an ongoing obligation like the current annual return duty.

This option would address the problem by requiring fundraising charities to share how they will use charitable funds to maintain charitable purpose after they have been registered. It means there would no longer be a lack of clarity on if, when and how those charities are going to distribute funding. The plan would be shared publicly on the charities register.

Questions:

11. Will this option address the problem by improving transparency of how fundraising charities distribute funds?
12. How will this option impact your charity or the charities you represent? How will it change behaviour?
13. If a distribution plan states that funding will be distributed to a related charitable entity (e.g. parent or subsidiary organisation), should those funds be able to be re-invested in the fundraising charity?
14. What should be the consequence of non-compliance with the plan?

Option 5: Minimum distribution requirement

This option would require fundraising charities to distribute a minimum of five per cent of their net assets per annum. This is based on approaches to private foundations in similar jurisdictions like Australia and Canada. This may address the problem because there would be no question on when and how much funding fundraising charities are expected to distribute. However, we note submitters in 2019 strongly opposed this approach because it may result in unintended consequences and could be costly.

Questions:

15. Will this option address the problem by improving transparency of how fundraising charities distribute funds?
16. How will this option impact your charity or the charities you represent? How will it change behaviour?
17. Is “net assets” the right baseline? Should it be “net surplus”, or some other indicator instead?
18. Is five percent of net assets an appropriate minimum? Should it be higher or lower?

Providing feedback

We are very keen to hear your views. Please email **charitiesact@dia.govt.nz** with answers to the questions **by Monday 24 May**. It would be helpful if you could reference the question number in your response. You can answer as many or as few questions as you like. Unfortunately, we will not be able to consider responses received after Monday 24 May. Please note that all responses become public information that can be requested under the Official Information Act 1982. Indicate clearly if any information you provide is confidential or should not be disclosed.

We will use your feedback to help us develop policy proposals on modernising the Charities Act. Final proposals will be presented to the Minister for the Community and Voluntary Sector, who may present proposals to Cabinet for approval. If proposals are approved by Cabinet and require legislative amendment, there will be an opportunity for public consultation through the Select Committee process.

We look forward to hearing from you. For more information on this work, see www.dia.govt.nz/charitiesact.