



Modernising the Charities Act 2005

We want your views on charities with business activities

Tēnā koe. This document seeks input from targeted stakeholders on initial options to improve the transparency of charitable business registration requirements. Your views will help us to refine the options and understand what they might mean for you or the charities you represent. We are also seeking your insights into private profit in charities with business activities, business decisions that put charitable funds at risk, and consolidated reporting issues.

Background

Business is a well-established way for charities to raise funds

Charities with business activities can register with Charities Services if the business income is ultimately applied to the charity. This is laid out in *Auckland Medical Aid Trust v Commissioner for Inland Revenue 1979*. The case law provides flexibility for Charities Services and the Charities Registration Board (the Board) to decide how to apply the case law. In applying the case law, Charities Services and the Board request that the charity must demonstrate that:

- The business can fundraise for the charity; and
- The charity will not provide resources to the business below market rate.

The approach of the Board and Charities Services is based on a review into the International Centre for Entrepreneurship (ICE) Foundation. Since then, Charities Services and the Board have used the same approach to assess charitable business registration applications. Charities can also demonstrate eligibility in other ways.

Problem: information on the approach is hard to access, and some people think it is arbitrary

Some submitters to the 2019 discussion document said that the approach is arbitrary and without legal basis. The approach and the ICE Foundation case review are in separate locations on the Charities Services website. This means the information is not easy to access. This limits transparency about what an applicant needs to demonstrate to register a charity with business activities, and the basis for the approach.

Initial policy options

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

We have developed some potential options that could address the problem. They are:

Option 1: No change (maintain the current settings);

Option 2: Charities Services recommends Board formally approve the approach.

Option 3: More information on the charitable business registration requirements and process in plain English.

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

Option 1: No change

Currently, the approach and the ICE Foundation case review are in separate locations on the Charities Services website. Under this option, we would not make changes to these settings.

Questions:

1. What is your experience of finding information on what is required to register a charitable business?
2. What is the impact of this option on charities with kaupapa Māori which seek to register a charity with business activities?
3. Is there anything else you would like to add?

Option 2: Charities Services recommends the Board formally approve the approach

Formal approval of the approach would address concerns it is arbitrary. As part of the option, the Board may decide to consult stakeholders on the approach to registering charitable businesses. The Board can approve or reject the recommended approach.

Questions:

4. What risks to charitable business registration does this option create?
5. What is the impact of this option on charities with kaupapa Māori which seek to register a charity with business activities?
6. Would this option address concerns that the approach is arbitrary?
7. What else would address concerns that the approach is arbitrary?

Option 3: More information on the charitable business registration requirements and process

Information would be published in plain English on the Charities Services website and would include:

- The approach to charitable business registrations;
- A brief description of the case law and ICE Foundation review that is the basis of the approach; and
- A mention that charitable entities can demonstrate eligibility in other ways.

This option would address the transparency problem by providing accessible information.

Questions:

8. What risks to charitable business registration does this option create?
9. What is the impact of this option on charities with kaupapa Māori which seek to register a charity with business activities?
10. How would this option affect your ability to find the requirements to register a charitable business?
11. Is there anything else that would improve access to information on the approach?
12. Is there anything else you would like to add?

Input into other issues on charities with business activities

We are conducting further work on issues around private profit, business decision-making and consolidated financial reporting. Your input will provide valuable insight into these topics. Below we describe each topic and propose some questions for you.

Private profit in charities with business activities

A registered charity can carry out profit-making activities, as long as all of the profits created are used to further charitable purposes and are not used to further the private financial interest of individuals or other non-charitable organisations. Paying for goods and services is acceptable if the payments are reasonable and based on 'arms-length market rates' or below market rates. Arms-length means they must be made as if they were between two unrelated individuals. A charity with an independent purpose to provide private profits may be deregistered.

Questions:

13. Does private profit need to be addressed in ways other than deregistration?
14. How do charities manage the risks of private profit?
15. Is there anything else you would like to add?

Consolidated financial reporting

Charitable businesses can provide group financial statements to Charities Services. The financial statements must include all the businesses that the charity controls, and the overall revenue, expenses and transactions of the group with external entities. Movements of funds between the charity and its entities are not visible in consolidated financial statements.

Questions:

16. What are the benefits of charities providing separate financial statements?
17. What are the disadvantages of charities providing separate financial statements?
18. Is there anything else you would like to add?

Business decisions that put charitable funds at risk

Business decisions by charities can put charitable funds at risk. In some cases, the affected money has been significant. Submitters to the 2019 discussion document were asked if there should be restrictions on the level of risk for charities undertaking business activities. There was no consensus. When funds are grossly mismanaged, the charity may be deregistered.

Questions:

19. What action should be taken if charitable funds are put at risk?
20. Is there anything else you would like to add?

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.