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Targeted consultation – modernising the Charities Act 2005

The Institute of Directors (IoD) appreciates the opportunity to comment on the Department of Internal Affairs' (the Department) initial options to help develop policy proposals on modernising the Charities Act 2005 (the Act). The IoD is committed to raising governance standards in all areas of New Zealand business and society and we welcome efforts to modernise the legal framework for charities. In 2019, we [submitted](#) on the Department's discussion document on modernising the Act.

About the Institute of Directors

The IoD is New Zealand's pre-eminent organisation for directors and is at the heart of the governance community. We believe in the power of governance to create a strong, fair and sustainable future for New Zealand.

Our role is to drive excellence and high standards in governance. We support and equip our members who lead a range of organisations from listed companies, large private organisations, state and public sector entities, small and medium enterprises, not-for-profit organisations and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good governance.

Overview of consultation

The Department has published three consultation papers for targeted stakeholder feedback on the following topics:

- the structure of the charities regulator (the Registration Board and Charities Services), decision-making and the appeals process
- compliance and enforcement powers of the charities regulator
- the role of officers.

Feedback on the papers will be used to develop policy proposals on modernising the Act.

Our submission mainly focuses on governance and officer-related matters. Notwithstanding our comments here, the IoD may make further comments as the review progresses.

Governance duties of officers

The Department has identified several issues around governance including that the Act does not have any detail on the role of officers (board members). The Department has set out options to address these issues including introducing duties into the Act or providing a best practice guide.

In our earlier [submission](#), we supported introducing a voluntary governance code for charities rather than introducing legislative duties in the Act. There are already legislative duties for officers in the Companies Act, the Trusts Act and in the Incorporated Societies Bill. Introducing further legislative duties in the Act would essentially duplicate these. There are various reasons why a code would be a better option, for example codes can:

- help build governance capability
- provide more flexibility and comprehensive guidance (eg through principles, recommendations and commentary)
- allow differential requirements for small and large organisations.

A community governance code is being developed later this year by the Centre for Social Impact and this a crucial opportunity for Charities Services and the sector to be aligned.

Serious criminal offences

People can be disqualified from being officers under the Act for many reasons including if they have been convicted of a dishonesty offence in the last 7 years. The Act doesn't exclude officers with other serious offences such as fraud, murder, manslaughter or terrorism. The Department has put forward several options to address this including adding more disqualification offences into the Act.

There should be more stringent requirements around who can be an officer of a charity given the potential to undermine public trust and confidence in the sector and we support including more serious criminal offences as disqualifying factors under the Act. We encourage the Department to consider the experience of similar jurisdictions overseas in dealing with these matters (eg UK).

We also encourage the Department to consider disqualifying people who have been:

- convicted of offences overseas that are in all material respects equivalent to those offences disqualified under the Act in New Zealand
- banned in governance roles overseas from being officers of charities (or other entities).

Banning and suspending officers

The Department is considering amending/adding regulator powers to address enforcement gaps in the Act.

Under the Act a regulator can only disqualify a person from being an officer of a charity in the event a charity is deregistered. The Department is considering introducing a power to disqualify an officer, without having to first deregister the charity.

It is appropriate that there is more flexibility to ban officers in serious cases and there should be consistency with other not-for-profit legislation (eg banning provisions in the Incorporated Societies Bill).

The Department is also considering introducing a power to suspend an officer for a specified period to protect charitable assets during an investigation.

The power seems to be appropriate for the regulator and we understand that there are similar provisions in relation to charities in the United Kingdom. However, there will need to be appropriate safeguards in place such as defining in what circumstances an officer may be suspended and the process and timing.

We appreciate the opportunity to provide feedback on behalf of our members and we would be happy to discuss this with you.

Yours sincerely,



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