

20 September 2022

[Title] [Firstname] [Lastname], MP
Freepost Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160

Tēnā koe [Salutation] [Lastname]

ACT NOW! POOR REFORM OF CHARITIES LAW MUST NOT PROCEED!

I am writing on behalf of Trust Democracy, an incorporated society¹ that aims to strengthen public discourse, education and research on democracy in Aotearoa New Zealand, because of our deep concern regarding yet another piecemeal approach to reforming charity law.

Members of Parliament on all sides of the House will frequently come into contact with the work of charities, either on particular topics, or during electorate work. We know you will understand the vital role they play at both a community and national level.

Despite the importance of the role, the sector has been hamstrung by a legislative regime that was widely acknowledged as fundamentally flawed even at the time it was passed. While successive governments have tried to fix it through piecemeal amendments, the Labour Party promised “a first principles review of the legislation, including examining, updating and widening rather than narrowing the definition of charitable purposes” in its manifesto for the 2017 general election.² Five years on, this review has not taken place, and the Minister has announced another set of piecemeal amendments that do not address the core problems.

Trust Democracy wrote to the Minister, Hon Priyanca Radhakrishnan, in July, outlining our concerns and calling on her to honour the Labour Party’s manifesto pledge. Please take a moment to read the attached copy of the letter. We have not received a reply from the Minister.

Rather than pushing ahead with the current reform agenda, Trust Democracy calls for the independent first principles review that has been needed for 17 years. To confirm the case for this, we would ask that you invite the chair of the relevant select committee to hold an inquiry into the state of our charities regime.

Please do not hesitate to contact me if you would like to discuss any of the points raised in this letter.

Ngā mihi, nā



Simon Wright, Chair

¹ Trust Democracy has never applied for registration as a charity.

² Community and Voluntary Sector Manifesto, The Labour Party, 2017. Page 5.

13 July 2022

Hon Priyanca Radhakrishnan
Minister for the Community and Voluntary Sector
Parliament Buildings
Wellington 6160

Re: Charities Act reform process

Tēnā koe Minister

On behalf of Trust Democracy, I am writing to express our deep concern about the direction of the Government's charities reform agenda. We urge you to:

1. Seek independent advice and learn from the history of charities reform in New Zealand;
2. Stop the process you announced on 2 June;³ and
3. Commission an independent first principles review that incorporates a deliberative mini-public process.

The charities regime has been regarded as fundamentally flawed since the Charities Bill 2004 was almost completely rewritten at Select Committee stage with further changes made by Supplementary Order Paper before being passed under urgency on a single day in April 2005. Since then, the sector has been inhibited by legislation that too often frustrates rather than facilitates its work – a fact that successive governments have attempted to address through a series of piecemeal amendments, and which Labour recognised by promising to conduct an independent, first principles review of the Act in its 2017 manifesto.

The review carried out by Te Tari Taiwhenua: Department of Internal Affairs (DIA) since 2018 does not constitute either an independent or first principles review. Its narrow initial scope prompted 12 philanthropic organisations and 4 companies to fund Trust Democracy and Sue Barker Charities Law to independently engage the sector from late 2018. After engaging more than 1,200 people at 30 events around the country (23 with the DIA), we can confidently say that the proposals you recently announced do not cover the sector's issues.

About two-thirds of the 363 submitters to the DIA's 2019 consultation sought an independent review and nearly all asked for the scope of the review to be widened to consider whether Charities Services and the Charities Registration Board should be restructured into a single independent entity.

We would argue that the current proposals reflect a narrow and restrictive view of charity and of what charities should be and do, which is based on 16th-century English concepts. This is why a first principles review is needed if you really "want to ensure that our legislative settings are fit for them [charities] to continue supporting our communities into the future" and to reduce the need for appeals.

³ <https://www.beehive.govt.nz/release/charities-act-changes-benefit-nz-communities>

The review also needs to be independent as the DIA continues to avoid questions raised by the charitable sector relating to Charities Services and its interpretations of the Act. The DIA should not be reviewing part of itself and the credibility of the Government and the reform process will stand on there being no perception of capture by officials from the DIA.

For the reasons outlined above, we urge you to seek advice from a range of sources, not just the DIA, including Sue Barker's recently published report: *Focus on purpose – What Does a World-Leading Framework of Charities Law Look Like?*⁴ The research for this New Zealand Law Foundation report builds on our 2019 sector engagement referred to above and is very comprehensive.

We need to learn from previous efforts to reform our charities regime reform: Select Committee is not the place for major issues to be raised and addressed. We would therefore ask you to stop the current process and commission a comprehensive, independent, first-principles review.

As part of the review, Trust Democracy would recommend requiring the use of a representative mini-public process (e.g., a citizens' jury) to consider the many normative questions about the nature of charity, etc in 21st-century New Zealand. Such processes are now recommended by bodies such as the UN and the OECD.⁵ If you are interested in using a mini-public, please talk to Minister Hipkins about the possibility of including it in New Zealand's 4th National Action Plan under the Open Government Partnership.

Trust Democracy is not a registered charity and has never sought registration. It was established in 2018 as an incorporated society dedicated to strengthening public discourse, education and research about democracy in Aotearoa New Zealand. While much of the public discussion focuses on our formal national institutions (e.g., elections, political parties, Parliament), a thriving democracy also needs empowered participation for people in local, regional and national communities, workplaces and organisations. This broader view is necessary if we are to enable the charitable sector to help strengthen communities and social cohesion generally.

Please do not hesitate to contact me if you would like to discuss any of the issues raised in this letter.

Ngā mihi, nā



Simon Wright
Chair

⁴ <https://www.lawfoundation.org.nz/wp-content/uploads/2022/04/Charities-Law-Reform-Report-April-2022.pdf>

⁵ <https://trustdemocracy.nz/2021/10/homework-for-democracy/>