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Committee Secretariat  
Social Services and Community Committee  
Parliament Buildings  
Wellington  
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## Submission on the Charities Amendment Bill 2022

The Institute of Directors (IoD) appreciates the opportunity to comment on the Charities Amendment Bill 2022 (the Bill). We would also like to speak to this submission.

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 and the obligations of those who run them. We can see considerable benefit of improving governance standards for the charitable/not-for-profit sector, while ensuring the changes don't overburden organisations and deter people from getting involved in leadership, particularly in governance roles.

We also support proposals to strengthen who can be qualified to be officers of charities, including amending the definition of an officer of a charitable organisation, and the requirement for Tier 1, 2 & 3 reporting entities to report on funds accumulation policy and practice.

Our submission is limited to three key areas:

### 1. Improving governance standards

- *Duty on officers to ensure their charity retains its status*
- *Clarification of role of officers of a charity*
- *Duty to review governance procedures annually*

#### About the Institute of Directors

*The IoD has over 10,000 members, 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. 51 percent of our members have a not-for-profit governance role, and this is the main governance role for 25 percent of members.*

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

The IoD supports each of these proposed changes which will improve the standard of governance of charitable entities, while not unduly overburdening organisations.

## 2. Officer qualification and definition

- *Extension of definition of officer*

The IoD supports this proposal to ensure all people who contribute to the direction or decision-making of a charity, regardless of how the charity has organised its governance structure, are accountable. Stakeholders/members, funders and the public are entitled to expect the highest standard of best practice governance for those who lead charitable entities.

- *Change to age eligibility for officers of a charity*

The IoD supports this proposal. Good governance practice includes increasing diversity on boards, including young people.

- *Change to officer disqualification criteria*

The IoD supports more stringent requirements on who can be an officer of a charity given the potential to undermine public trust and confidence in the sector.

## 3. Funds accumulation.

- The IoD supports this change that will require larger charities (Tier 1, 2 & 3) to report the reasons for their accumulated funds. Organisations need to be transparent about their strategy for accumulating funds and spending funds on charitable purposes

## Background

The work to modernise the Charities Act has been prompted by changes in the wider operating environment for charities, including legislative changes governing trusts and incorporated societies, as well as feedback from the charitable sector.

The objective of the Bill is to make practical changes to the Charities Act 2005 (Charities Act) to support charities to continue their vital contribution to community well-being, while ensuring transparency and maintaining public trust and confidence in how the charitable sector operates.

The Bill makes practical improvements to address some of the challenges that charities face to make it easier for charities to continue their work, while ensuring that contribution is sufficiently transparent to interested parties.

## 1. Improving Governance Standards

- *Duty on officers to ensure their charity retains its status*

Clause 8 of the Bill inserts new section 13A in to the Act, which requires a charitable entity to remain qualified for registration as a charitable entity at all times.

New section 13A subsection (2) sets out the requirements a charity must meet to remain qualified for registration. A charity that does not remain qualified for registration may face removal from the register under section 31.

We agree with this proposal, as it is good governance practice that officers take an active role supporting the charity to meet its obligations and retain its charitable status. The officers will need to ensure the charitable entity has and maintains rules, its officers meet qualification requirements under the Act, and comply with all other legal obligations to be able to retain the ongoing benefits of its charitable registered status.

### - *Clarification of role of officers of a charity*

Clause 17 of the Bill inserts new section 36A, “Role of officer of charitable entity”.

The current Act does not outline the role of officers, specify any governance duties of officers, or governance requirements an entity must meet to be able to register as a charity. The Department reports stakeholder feedback revealed many officers were unclear about their role in the charity.

The proposed new section 36A clarifies that the role of an officer is to support the charity to deliver its charitable purpose and comply with its obligations under the Charities Act or any other laws.

The IoD supports this proposed change, in conjunction with the new requirement on charities to review their rules documents every year (discussed further below). This change is clearly intended to improve the accountability and governance of charities, by providing officers with a clarity of their role. It also aligns the Act with other legislation which governs charities, for example, the Incorporated Societies Act 2022 and the Health and Safety at Work Act 2015.

### - *Duty to review governance procedures annually*

Clause 20 of the Bill proposes a new section 42G of the Act requiring registered charities to review their governance procedures annually, wherever they are set out (i.e. the constitution, trust deed or elsewhere). Such review would require the charitable entity to consider whether its governance procedures are current, assist the entity to achieve its charitable purpose, and assist the entity to comply with the requirements of the Act.

We support the proposed new requirement on the basis that it aims to improve governance practices in the charitable sector, by ensuring that charities do review their founding rules and governance procedures, and actively consider whether they remain relevant to the work of the organisation, and its purpose.

However, we have concerns that this requirement as currently worded, may be considered by many charities as an unduly burdensome obligation or requirement imposed upon them, without considering the benefit they may obtain. In our view, there is a risk that this may be treated as a “tick-box” compliance exercise, defeating the purpose of the incentive.

We suggest a slightly different approach, with a review being completed once every two years, with a focus on governance practices and purposes. That review would require the charitable entity to consider how these practices and purposes are reflected in their rules/constitution, with the outcome of that review being tabled at the AGM.

## 2. Officers

### - *Extension of definition of officer*

Clause 4 of the Bill extends the existing definition of “officer” in section 4 of the Act, to include all people with significant influence over the management or administration of the charitable entity regardless of the type of entity. The IOD supports this amendment as it is consistent with the IoD’s objective of improving the standard of governance in New Zealand, and will assist in building trust and confidence that registered charitable entities are being well governed.

This proposal also removes an ambiguity in the existing definition, and aligns with the definitions of an officer in the Incorporated Societies Act 2022, and the Health & Safety at Work Act 2015. The IoD welcomes steps to increase consistency across legislation applying to the charitable sector wherever possible, to reduce uncertainty across the sector.

The proposed amendment will ensure that all people who contribute to the direction or decision-making of a charity, regardless of how the charity has organised its governance structure, are accountable. The current definition does not do that – meaning that the disqualification provisions in section 16 of the Act may not always be applicable to the people who are responsible for managing the charity’s funds.

The proposed new definition will ensure that all people who have significant influence over the management or administration of the entity, are held to the same high expectations, and may be held accountable for their actions.

Stakeholders/members, funders and the public are entitled to expect the highest standard of best practice governance for those who lead charitable entities due to the nature of the entity, the charitable purposes being furthered, as well as the benefits afforded to a registered charitable entity. Good practice governance requires all people occupying positions of trust such as a director or officer – however described - are beyond reproach, irrespective of the type of organisation.

### - *Change to age eligibility for officers of a charity*

Clause 7 of the Bill adds a new section 13(1)(e) which requires at least one of the officers of the charity to be 18 years or older. This recognises the requirements in the Companies Act 1993 and Trusts Act 2019 for directors or trustees to be at least 18 years old, but also recognises that young people aged 16 or 17 can contribute to charitable work by being an officer.

The IoD supports this proposal. Best governance practice includes increasing diversity on boards, including young people. Being able to appoint young people to leadership roles may be of extra significance in the charitable sector, to maintain a connection with, and the trust of the community they represent. Appointing young people increases the diversity of thought and views to the leadership team, and develops its leadership capability. The IoD is supportive of young people being enabled to take up leadership roles, provided they are well supported and mentored.

We would encourage the committee ensures this provision is compatible with existing age eligibility requirements for officers in other legislation.

### - *Change to officer disqualification criteria*

Clause 17 of the Bill introduces a new section 36B to the Act – “Qualifications of officers of charitable entities”.

This amendment proposes a new disqualifying factor preventing anyone convicted of an offence related to financing of terrorism in prescribed circumstance, from holding an officer role in a charity.

We agree with and support this amendment, which is consistent with IoD's 2019 submission in support of more stringent requirements on who can be an officer of a charity given the potential to undermine public trust and confidence in the sector.

The IoD also supports the proposed amendment at clause 4(1)(2) of the Bill, amending the definition of "serious wrongdoing" at s.4(1)(c) of the Act to read "an act, omission, or course of conduct that constitutes an offence "punishable by imprisonment for a term of two years or more".

### **3. Accumulation of funds**

#### *- Charities accumulating funds*

While legislative change is not required, the Department has indicated that Charities Services will update the annual return form, in consultation with the sector and iwi, to require larger charities (Tier 1, 2 & 3) to report the reasons for their accumulated funds.

The IoD supports this change. As we submitted in 2019, it is important that organisations are transparent about their strategy for accumulating funds and spending funds on charitable purposes (e.g. through a reserves policy and in their annual reports). Transparency and meaningful reporting is important to stakeholders and can help build trust and confidence in the charitable sector.

The IoD supports the proposed change that would see larger entities reporting further on their agreed funds accumulation strategy, and how it has been applied and implemented in their annual report. It would also be useful to report on this at the AGM.

Encouraging charities (and other organisations) to consider reserve levels is an important part of financial resilience, organisational sustainability and being able to demonstrate a clear link to their purpose, and transparency about the implementation of the strategy.

We appreciate the opportunity to comment on behalf of our members and we confirm that we would like to speak with you about it.

Yours sincerely



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