



30th April 2019

**Submission to the Department of Internal Affairs
Modernising the Charities Act 2005**

The New Zealand College of Public Health Medicine would like to thank the Department of Internal Affairs for the opportunity to make a submission on Modernising the Charities Act 2005.

The New Zealand College of Public Health Medicine (the College) is the professional body representing the medical specialty of public health medicine in New Zealand. We have 222 members, all of whom are medical doctors, including 185 fully qualified Public Health Medicine Specialists with the majority of the remainder being registrars training in the specialty of public health medicine.

Public Health Medicine is the branch of medicine concerned with the assessment of population health and health care needs, the development of policy and strategy, health promotion, the control and prevention of disease, and the organisation of services. The NZCPHM partners to achieve health gain and equity for our population, reducing inequalities across socioeconomic and cultural groups, and promoting environments in which everyone can be healthy.

Background

Charities play a major role in New Zealand through various activities and services such as education, counselling, religious, arts/culture, health, social, and sports services.¹ They range from small grass-roots community groups, to large education institutions. Some are involved in making grants, providing facilities and carrying out diverse activities like community and conservation projects. There are over 27,000 registered charities in New Zealand which make significant contributions to society. The charitable sector is supported by approximately 230,000 volunteers and employs 183,300 staff. Every year, these charities have a combined income of \$18 billion, spend \$17 billion and manage \$58 billion in total assets¹.

Law Commission involvement

The College understands that the purpose of modernising the Act is to ensure it is fit for purpose and will serve the needs of NZ's growing and diverse charitable sector.¹ It has been thirteen years since the Charities Act was passed, and many have felt that subsequent amendments have been made without proper consultation.³

In order to ensure a sustainable and thriving charitable sector the Act must be well-designed and effective. However, the College is concerned that this process may be being rushed, and that the time frame is too short to properly address all key concerns.⁴

We believe that a comprehensive review of the regulatory framework is needed to appropriately deal with all the complex issues under the Act. We join with the *LEAD Centre for Not for Profit Governance & Leadership* in

calling for the review of the Charities Act to be carried out by The Law Commission, as has been the case with the review of the Incorporated Societies Act and Trustee Act.⁴

Advocacy

Advocacy is a key feature of a democratic and participative society and crucial to the development of policies and laws.⁵ Whilst it is globally accepted that charities should not engage in partisan political activity, we believe that advocacy is a legitimate way for charities to achieve their charitable purposes and that charities should be allowed to voice their concerns and influence public policy.¹

Not only is advocacy a legitimate way for organisations to achieve their charitable purposes, but in some cases, members of a specific profession and the organisation representing those members have a professional duty and responsibility to advocate for better conditions.

In medicine, health professionals have a responsibility to advocate for better conditions for the patients in their care and for patient populations more broadly.⁶ Doctor's professional roles include, not only clinical care and the care of populations within day-to-day practice, but also supporting movements for social change where this is in the interests of improved public health and health equity. The longstanding ethic of medical professionals to "First do no harm" extends to speaking out against policies and practices that harm—whether by damaging child health, widening health gaps, escalating climate risk, or ignoring harm.⁶ The role of doctors as advocates is also embodied in professional codes such as the New Zealand Medical Association's (NZMA) *Role of the Doctor* consensus statement⁷ and *Code of Ethics*⁸, which describe doctors as scientists, leaders and public health advocates, with health advocacy a formal role in itself. The NZMA's landmark 2011 statement on health equity⁹ moreover, mandates doctors to talk about what determines health.

The current Charities Act offers little guidance on the extent to which charities can advocate for causes linked to their charitable purposes. Instead the precedents for decisions regarding whether advocacy activities may be conducted by charitable organisations are set in common law. Whilst some of these decisions have been tested in court, few decisions have been appealed, hence the law has been slow to develop and is complex.¹

The College believes that charities should have greater freedom to advocate for policy and law changes without fear of deregistration. We believe that the terms of reference for the review of the Charities Act should be asking how the legal framework can best support charities to advocate in furtherance of their charitable purposes.⁴

Thank you for the opportunity for the NZCPHM to submit on Review of the Charities Act. We hope our feedback is helpful and are happy to provide further clarification on any matter covered in this submission.

Sincerely,



Dr Felicity Dumble, President, NZCPHM

References

1. Department of Internal Affairs. Modernising the Charities Act 2005 Discussion Document. Wellington: DIA, 2019. ([https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-Modernising-the-Charities-Act-Discussion-Document-April2019/\\$file/Charities-Modernising-the-Charities-Act-Discussion-Document-April2019.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-Modernising-the-Charities-Act-Discussion-Document-April2019/$file/Charities-Modernising-the-Charities-Act-Discussion-Document-April2019.pdf))
2. Department of Internal Affairs. Themes from community meeting discussions (as at 25 March 2019). <https://www.dia.govt.nz/Modernising-the-Charities-Act:-Themes-from-community-meeting-discussions> Updated 2019.
4. LEAD Centre for Not For Profit Governance & Leadership. An uncharitable embrace: It's not too late to have your say on the Charities Act 2005. <https://www.lead.org.nz/news/2019/3/22/why-your-organisation-should-get-involved-with-the-charities-act-review-and-before-30th-april-5hcfg>. Updated 2019.
5. Kearns, K. P. Managing for Accountability: Preserving the Public Trust in Public and Nonprofit Organizations. San Francisco, United States: Jossey-Bass; 1996.
6. Hassall I, Metcalfe S, Blaiklock A. Child abuse in Australian camps—whose business, and who should speak out? N Z Med J. 2016; 129(1433):8-12. (<http://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2016/vol-129-no-1433-22-april-2016/6861>)
7. New Zealand Medical Association. Consensus statement on the role of the doctor in New Zealand. NZMA Position Statement. Wellington: N Z Med J, 2011. (https://www.nzma.org.nz/_data/assets/pdf_file/0006/16980/Consensus-statement-on-the-role-of-the-doctor-in-New-Zealand-November-2011.pdf)
8. New Zealand Medical Association. NZMA Code of Ethics for the New Zealand medical profession. Wellington: NZMA, 2014. (https://www.nzma.org.nz/_data/assets/pdf_file/0016/31435/NZMA-Code-of-Ethics-2014-A4.pdf)
9. New Zealand Medical Association. NZMA Health Equity Position Statement. Wellington: NZMA, 2011. (https://www.nzma.org.nz/_data/assets/pdf_file/0004/32449/consensuscontent.pdf)