

## Modernising the Charities Act Review 2005

### Te Tari Taiwhenua – The Department of Internal Affairs

#### The Salvation Army New Zealand, Fiji, Tonga and Samoa Submission

#### Our view of the Review:

1. The Salvation Army is very supportive of the intention to modernise and increase the effectiveness and efficiency of the Charities Act (the Act). However, we submit that this process and the scope of the Review are not sufficient to achieve the intended purposes of the Review. This view is based on the following reasons:
  - a. We propose that a more independent body like the Law Commission undertake a broader and more comprehensive review of the Act. There is a precedent for this from 2013 when the Law Commission reviewed the Incorporated Societies Act 1908.<sup>1</sup> This review resulted in the Law Commission recommending a new, more modern and fit-for-purpose Incorporated Societies Act is drafted and passed into legislation to replace the 1908 Act. We contend that directing the Law Commission's considerable resources towards reviewing this Act would lead to a stronger and more impactful review;
  - b. Additionally, as aforementioned, we submit that independence is crucial for this review. The Salvation Army, and others in the NGO and community sector, has observed the role of Charities Services develop from monitoring to also regulating the charitable sector. We are perplexed with this change, particularly around the registering, deregistering and appeals processes for charities. Therefore we submit having an independent body like the Law Commission is crucial to having a fair and robust review process that exists outside of the Department of Internal Affairs (DIA) and Charities Services. We note there are other statutorily defined independent structures available and these options should be explored in a much comprehensive review than what is happening currently;
  - c. The Terms of Reference for the review are too narrow. The four elements excluded from the review in the Discussions Paper (***the definition of 'charitable purpose' (section 5(1) of the Act), tax exemptions for charities registered under the Act; regulation of the broader not-for-profit sector; and contracting arrangements for government services***) are in our opinion all vital areas that need to be included in this review. This could be a once in a lifetime chance to systematically review and modernise this Act. Consequently it baffles us that these areas are not included in the review and we call on the Law Commission (when they are tasked with an

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<sup>1</sup> <https://www.lawcom.govt.nz/our-projects/incorporated-societies-act-1908>

independent review) to include these four essential aspects of the charitable sector into a more comprehensive review.

- i. For example, The Salvation Army has consistently called for more fairness and investigation of contracting arrangements with the Government. We hold several contracts for services which are hugely important for our service to the community. But these contracts can also be very challenging in terms of reporting, monitoring, innovation, evaluation and agreeing on fair contract amounts. We have tried to contribute to different reviews around these issues like the Productivity Commission's work on more effective social services.<sup>2</sup> But we have not seen any real change in these contracting arrangements or the often silo-mentality of Government departments since this work. We are passionate about our Christian mission and the social services we provide. But the stagnation and even decline in government funding in some social service provision areas indeed makes our work extremely difficult;
- ii. Also, we submit that any review of the Act must include a discussion and review of the definition of charitable purposes. We note that this has been contentious and sometimes confusing in recent times. We contend that the Act should clearly define these purposes, and that this should not be left up to the Courts. The Salvation Army has followed in recent times the Board decisions and court cases involving for example SAFE, Clevedon Village Trust, Greenpeace and Family First. We believe there has not been enough consistency and clarity in these decisions and we are troubled by some of these developments.
- iii. For these reasons, we call on the Government and ideally the Law Commission or other capable independent body to extend the Terms of Reference and therefore the parameters of this review.
- d. While we are advocating for a more extensive review from an independent body, we also acknowledge that the majority of charities operating in New Zealand are smaller, do some great work in the community, but are also stretched in terms of resources. The Salvation Army is a large charity, falling within the Tier One category. Therefore, we have some capacity to prepare and develop responses to these types of reviews. But we are concerned that many of the smaller charities whose work is key to their local communities might not have the time, capacity or resources to provide essential feedback to these reviews. A more comprehensive independent review, with a longer review period, must ensure and provide different forms of feedback (e.g. submissions through writing, video, audio, collaboration amongst local community groups etc.) so that the voices across the sector are heard.

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<sup>2</sup> <https://www.productivity.govt.nz/sites/default/files/social-services-draft-report-summary%20version.pdf>

## Background of The Salvation Army:

2. Again we are a Tier One fairly large charity in New Zealand. In the Charities Register, we are registered under *The Salvation Army Group* which consists of four members - The Booth College of Mission Foundation Fund, The Edmund and Maud Sanderson Jeff Charitable Trust, The Salvation Army New Zealand, and The Salvation Army New Zealand Trust. Our stated charitable purpose is; *The Trust was established to further the objects of The Salvation Army, being the advancement of the Christian religion as promulgated in its religious doctrines, which are professed, believed and taught by The Salvation Army and, pursuant thereto, the advancement of education, the relief of poverty, and other charitable objects beneficial to society or the community of mankind as a whole.*<sup>3</sup> We are committed to fulfilling our obligations with Charities Services.
3. The Salvation Army is an international Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and Christian faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society. We are passionately committed to our communities as we aim to fulfil our mission. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. This service covers numerous Christian spiritual and social (addictions, social housing, prisoner reintegration, foodbanks, social work, community finance, financial mentoring and budgeting and many more) services across the nation. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society by God's power.<sup>4</sup>
4. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Andrew Westrupp, Territorial Commander of The Salvation Army's New Zealand Fiji Tonga and Samoa Territory.

## Specific Responses to the Review Questions:

5. We have attempted to be clear that we believe there are clear shortcomings with this current review process. We sincerely hope that Minister Henare will re-scope and relaunch a new, more independent and much more wide-ranging review of the Act and the sector. Still, just in case these suggestions and recommendations are not accepted by the Minister, we do want to make some specific comments on the current aspects of the review. These are detailed below. They are general comments and are not in-depth particularly because some of the areas we definitely want to respond to are not included in the Terms of Reference

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<sup>3</sup> <https://www.register.charities.govt.nz/CharitiesRegister/ViewCharity?accountId=b5b3d0ae-9bdd-dc11-8026-0015c5f3da29>

<sup>4</sup> <http://www.salvationarmy.org.nz/our-community/mission/>

## 6. Vision and policy principles

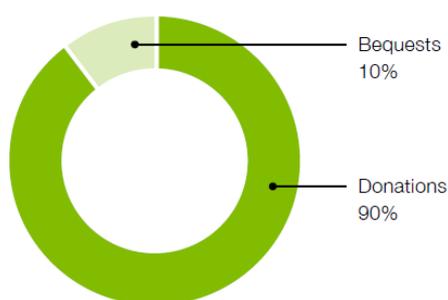
### a. What are the key challenges facing the charities sector over the next ten years?

#### i. Donor fatigue

1. Within the NFP sector, fundraising is a critical and daily reality for our organisations. We are acutely aware that with the large number of charities in New Zealand, coupled with the numerous worthy causes, there is a real risk that charities will face various phases of donor (or compassion) fatigue. This fatigue can in turn create financial pressures for charities, particularly smaller ones. Additionally, donor fatigue can lead to cynicism and weariness which can lead people to not give, or to give through other mechanisms such as online crowd-funding websites.<sup>5</sup>
2. Furthermore, people can turn to other forms of giving if they are experiencing donor fatigue or cynicism. For example, several charities currently run second-hand stores and the public could donate by purchasing goods from these stores, donating goods to these stores, or even volunteering to different charities or causes.
3. The Salvation Army is conscious that fundraising efforts and donor fatigue will run hand-in-hand in the future. Philanthropy New Zealand's most recent *Giving New Zealand: Philanthropic Report 2014*<sup>6</sup> identified some of these key fundraising and fatigue issues. As the graph below illustrates, between 2014 and 2011, overall personal giving declined between years, whereas giving through bequests increased markedly in the same time span<sup>7</sup>:

Figure 4.1 Breakdown of personal giving in 2014

Source: BERL and Nielsen



<sup>5</sup> <https://www.stuff.co.nz/national/90430465/increasing-number-of-charities-creating-duplication-donor-fatigue>

<sup>6</sup> <https://philanthropy.org.nz/wp-content/uploads/2016/03/Giving-New-Zealand-2014-1.pdf>

<sup>7</sup> Ibid, page 10.

## ii. Duplication of services

1. With the sheer size of the NFP sector with over 114,000 organisations, there is a high likelihood that there is duplication of services delivered by these organisations. There are positives to this, including services and community solutions that are owned and relevant to specific communities and community needs. However, duplication can also lead to financial inefficiencies, confusion for communities about the large amounts of similar services and projects, and also donor fatigue and charity creep.<sup>8</sup>

## iii. Funding capture and contracting for service arrangements with Government

1. We submit that there is always a challenge to ensure that the services delivered by the NFP or charities sector are needed in the community and relevant to the mission of the charity. This is more complicated when funding arrangements and contracts are in place between the Government and the charity.

## iv. Mission Drift (particularly for Christian charities)

1. New Zealand is becoming an increasingly secular society as detailed in the 2018 New Zealand Faith and Belief Study.<sup>9</sup> In that climate, there is a challenge for Christian charities to hold onto their Judeo-Christian missions and visions within a society that is becoming apathetic and sometimes intolerant of these views. Peter Greer and Chris Horst cover this in their ground-breaking book *Mission Drift: The Unspoken Crisis Facing Leaders, Charities, and Churches*.<sup>10</sup> There is an ongoing and serious challenge for Christian charities to maintain their Christian mission and worldview, particularly if Government contracting and the dangers of funding capture mean that Christian charities are welcomed when contracting for services, but they cannot share openly why they do this work and what drives them. If charities cannot openly share their mission, particularly if this mission already falls within the parameters and purposes of the Act, then charities are not fully engaged in New Zealand civil society and there could be intolerance towards Christian faith-based charities.

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<sup>8</sup> <https://www.noted.co.nz/money/business/how-do-new-zealanders-rank-as-philanthropists/>

<sup>9</sup> <https://faithandbeliefstudynz.org/>

<sup>10</sup> <https://www.peterkgreer.com/mission-drift/>

**b. What are the key opportunities facing the charities sector over the next ten years?**

i. With our proposed comprehensive review undertaken by an independent body, the opportunities facing the charities sector are both numerous and exciting. Some of these include;

- 1. Modernising the sector without losing the heart** – this is important to ensure that modernising the Act and sector do not come at the expense of the goodwill and community heart behind most if not all charitable work.
- 2. Collaboration between** charities – finding new ways to work together, particularly between charities of varying size, could lead to more efficiencies and impactful charitable services.
- 3. Innovation and disruption** – The Salvation Army is very interested in how social innovation and disruption can happen in the charities sector. Although the funds available in the charities sector are much smaller compared to the corporate or private sector, there is still significant room and opportunity to be innovative in the community sector. For example, in February 2019 we launched The Good Shop Project aimed at disrupting the predatory payday lending and mobile trader businesses exploiting poorer people in specific communities.<sup>11</sup> The Good Shop is working well and we are planning to launch a second van in Porirua in July 2019. This project has only been possible through the support of various community and corporate partners. Innovation and social disruption in the charities or community sector is both needed and possible!

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<sup>11</sup> [www.salvationarmy.org.nz/get-help/welfare/good-shop](http://www.salvationarmy.org.nz/get-help/welfare/good-shop)

## 7. The purpose of the Act

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### a. Do you agree with either of the two possibilities for additional purposes?

- i. ***To support and sustain a robust, vibrant, independent, and innovative charities sector*** – We support this additional purpose. However, as discussed earlier, we believe a truly independent charities sector is more possible when it is independent from the DIA. Hence pursuing different forms of independent structure like a crown owned enterprise or an independent crown entity should be a core part of the proposed wider review of the sector.
- ii. ***To promote the transparency of the charities sector to donors, volunteers, beneficiaries and the public*** – We support this. But it is vital that the work and decisions of the Board and the Charities Services itself are transparent for the public to see as well as transparency for the broader sector.

## 8. Obligations of charities

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### a. Reporting requirements

#### i. **Is more support required for charities to meet their obligations? If so, what type of support is needed?**

1. We believe that more support is needed, particularly for the smaller charities. We submit that the support is needed in important areas such as financial reporting, governance training, or developing contract proposals. Additionally, working collaboratively and growing innovation are other areas charities could benefit from with more training and education. The Salvation Army believe that there can be cross-learning wherein charities can engage with and support other charities, thereby creating a stronger sector.

#### ii. **Should reporting requirements for small charities are reduced? If so, what would be the benefits? What would be the risks?**

1. We believe there might be a case for changing the reporting requirements for smaller charities. At the same time, having rigorous reporting requirements do increase transparency, professionalism and accountability in the sector. If the Law Commission undertakes a broader review, then we believe these options should be explored further.

### b. Accumulation of funds

#### i. **Should charities be required to be more transparent about their strategy for accumulating funds and spending funds on charitable purposes (for example, through a reserves policy)? Why? Why not?**

1. We submit that there more transparency is needed here, but only within reason. The existing reporting requirements are already weighty and often onerous. And some of these questions around fundraising and spending are already covered in these existing financial reports. At the same time, having something in place like a reserves policy does indicate good governance and management of the trust which in turn strengthens and modernises the sector. Again, the Law Commission should scope what are the costs and benefits of these options before clear decisions are made.

**c. Governance standards**

**i. Do you think governance standards could help charities to be more effective? Why?**

1. The Salvation Army supports this approach. However, we believe there is currently insufficient support available for Board members in charities to upskill in their governance training. There is some training available from the Institute of Directors and local councils. But this training is not coordinated. There needs to be investigation into what a strong governance training and education pathway could look like for the New Zealand charities sector.

## 9. Role of the regulator

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- a. We have already expressed some our views of the role of the regulator earlier in this submission. Central to our views are the need to have a more independent body outside of the DIA to regulate and support the sector. We believe there could be some traction to the idea of an advisory board, particularly if representatives of this Board came from charities of varying sizes in the country. But again, we submit these kinds of massive decisions are scoped out properly by an independent body like the Law Commission.
  
- b. Powers when considering applications for registration, powers during an investigation, and enforcement powers.**
  - i. We believe the powers available for investigation and enforcement are fairly adequate. However, we submit that the educational and support mechanisms are the most important in this regulation because in our experience, most charities are committed to their service and communities but often are stretched and under-resourced and consequently require strong support.
  
- c. The regulator's funding**
  - i. Should charities pay fees to contribute to the regulation of the sector? Should fees be tiered? Should a fee attach to registrations, as well as to filing annual returns?
    - 1. We would strongly oppose any imposition of fees to help support the regulation of the sector. Charities are generally under-resourced and often struggle financially, especially the smaller ones. Adding new fees could push many charities over the edge. We remind the DIA that we are talking about the charitable sector, not a corporate sector like energy, telecommunications or banking. Charities obviously have the for-profit models and structures that these sectors have and should therefore be treated differently.

## **10. Appeal of regulator decisions**

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### **a. Decisions subject to appeal**

#### **i. Which decisions made by Charities Services should be subject to appeal? Why?**

1. We contend there is an argument that all decisions by the Charities Services (if they remain the key regulator) should be subject to appeal. This is especially important for the sake of transparency and fairness in the sector.

#### **ii. Should the Act provide for internal review of Charities Services decisions?**

1. If the regulator function moved to an independent, newer body, then Charities Services or DIA could provide external review of the new body's decisions, therein increasing transparency and accountability.

### **b. Hearing new evidence, and how to hear the appeal**

- i. We definitely believe bringing evidence to appeals, especially for decisions around deregistration are crucial and should be made easier for the charity. Additionally, we submit that evidence provided orally is fairer and follows the principles of the rule of law in our nation.

### **c. Other approaches to enable the law on 'charitable purpose' to develop**

#### **i. What other mechanisms (for example support for test cases) could be used to ensure that case law continues to develop?**

1. We would contend that these discussions and decisions on charitable purpose should be kept out of the courts as much as possible. That is why we have advocated here that a more comprehensive, robust and independent review by the Law Commission could help clarify these important parts of the sector that have been excluded in this DIA review. Case law is often helpful. But the definition of charitable purposes should come in the statute. Also, having a more vigorous appeals process will hopefully mean that these contentious cases are kept within the sector as much as possible.

## **11. Te Ao Māori**

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- a. The Salvation Army is not an exclusively Maori charity. But we have significant numbers of Maori staff and officers (church ministers), and clients. We also have standing MOU's with key Maori iwi. Therefore, we have some expertise in working with and for Maori clients, especially through our addictions services like the Hauora Programme, or through our relatively large work inside prisons and the prisoner reintegration space where the Maori statistics are well reported. Still, we are not an expert in Te Ao Maori and we are still on our own bi-cultural journey as a Christian NGO. For these reasons, it is difficult for us to comment on this aspect of this review.
- b. Given our points above, we believe that a more comprehensive review by the Law Commission should have a clear focus on Te Ao Maori and scope this part of the sector.

## **12. Business**

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- a. The Salvation Army is supported by the Family Store Second Hand stores we operate around the country. These stores help supplement funding for our core church and social services. We would be hesitant to support any move for increased reporting requirements as outlined above. Yet we are also keen to ensure that our processes remain legal, transparent and fair. Any changes to the business aspects of the sector would affect us greatly. There might be a case for reporting back in some form on business subsidiaries. But we submit that this review does not have enough information or context about what these options could actually look like in reality. We believe more investigation is needed about the possible scenarios and options. Suffice it to say that The Salvation Army would, if required, move to fulfil any additional business-centred reporting if required to ensure we are a fair and committed actor in civil society.

### 13. Advocacy

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- a. The Salvation Army has always tried to be a strong advocate to and with other sectors of society, particularly the Government. We have formalised some of this passion with the establishment of our Social Policy and Parliamentary Unit 15 years ago to be open advocates to Government on key areas of social policy in five specific areas; housing, crime and punishment, children and youth, work and incomes, and social hazards (alcohol and other drug addictions, problem gambling and problem debt).
- b. We strongly contend that there should not be unnecessary limits on advocacy by charities. We believe advocacy is a fundamental purpose and activity of the charitable sector. For us, the realities we see on the frontline of the services we provide drive and shape our advocacy back to Government and others. Limiting advocacy in effect limits a charity's ability to effectively do their and fulfil their charitable purposes.
- c. As we have mentioned earlier, some of the decisions by the Board and then the Courts concern us as they relate to advocacy and charitable purpose. In particular the challenges that Greenpeace and Family First have faced recently do alarm our organisation as political and social advocacy is a critical part of our work. Furthermore, as a Christian charity, our Biblically based beliefs, worldview and mission could complicate this advocacy, particularly if others such as the Board or Charities Services become intolerant of such views. In effect, we do not want to be effectively 'gagged' from our advocacy functions. This advocacy is us taking the realities of those using our spiritual and social services back to Government to argue for fairer, more just and more effective law and policy. This is truly charitable. Tolerance has to be a two-way street despite the differences in views or approaches.
- d. For us, separating our advocacy from our overall charitable services is impossible. Even in regards to our political advocacy, we note Chief Justice Elias' comments in the Supreme Court decision about Greenpeace that charitable purpose and political purpose are not mutually exclusive. The majority plainly stated: "*We do not think that the development of a standalone doctrine of exclusion of political purposes, a development comparatively recent and based on surprisingly little authority*". Conversely, in regards to Family First, how can advocating for the traditional family and contentious issues such as abortion, same-sex marriage, euthanasia and other similar issues not be considered for the public benefit? The Salvation Army and many other Christian charities would have similar views on many of these issues. How then would the regulator and maybe the courts address all those differences with true fairness? Will we as an organisation face sanctions soon because of our views or advocacy despite our other charitable services? This is a very controversial area and The Salvation Army will follow this debate and development closely. Again, with the discussion of charitable purpose excluded from this review, having a healthy debate here is difficult.