

**Charities Amendment Bill  
Social Services and Community Committee**

**The Salvation Army Submission – 09 December 2022**

**Summary:**

1. Overall, The Salvation Army **opposes** the passing of this Bill into law. There are some aspects of the Bill that we do support which are discussed below. However, after this extremely drawn-out process that began back in 2018 to review the Charities Act 2005, the Bill that has subsequently emerged does not in our view effectively work to enable the charities sector to get on with their critical work in civil society to serve and support their local communities. There are significant gaps and uncertainties in the Bill, particularly in the following proposed areas: the stark absence of an independent first principles review; the appeals process; the charitable purposes reviews; financial reporting requirements; officers; reserves policy; and governance of charities. This submission unpacks our views and objections to this Bill further.
2. The Salvation Army supports the tone and intent of this Bill. Since 2018, we have consistently engaged with this Review process. On the face of it, many of the submissions we have made have in one way, shape or form been included or considered in this current Bill. However, upon closer inspection, there is much in this Bill that does not modernise the principal Act in a way that is truly helpful to the charities sector. The Salvation Army is a large Tier One 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. Because of our size, we can often better absorb and withstand many of the political, regulatory, and financial challenges that impact smaller charities. Consequently, it would be easy for us to support this Bill in its current form as the effects of it are not significant to us directly. However, our submission is also based on The Salvation Army being a part of the wider charities, not-for-profit sector and so we are commenting on the weaknesses of this Bill as a part of this sector. We are blessed to a part of this sector and do not want to be self-seeking in any submission we make. Subsequently, from this perspective, we have opted to oppose the passing of this Bill in its current form.

**Background of The Salvation Army:**

3. The mission of The Salvation Army Te Ope Whakaora is to care for people, transform lives, and reform society by God's power. The Salvation Army is a Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. It provides a wide range of practical social, community, and faith-based services, particularly for those facing various forms of hardship and vulnerability.

4. The Salvation Army's combined services provide support to around 140,000 people annually. These services included providing around 88,000 food parcels to more than 33,000 families, providing some 4,600 people with short-or long-term housing, and over 4,000 families and individuals supported with social work or counselling. The Salvation Army also provides almost 20,000 addiction services and counselling sessions through Bridge (Alcohol and other drugs) and Oasis (gambling). Bridge and Oasis support over 2,000 Tangata Whaiora and their whanau annually across the country.
5. This submission has been prepared by the Social Policy and Parliamentary Unit (SPPU) of The Salvation Army. The SPPU works towards the eradication of poverty by advocating for policies and practices that strengthen the social framework of New Zealand. This submission has been approved by Commissioner Mark Campbell, Territorial Commander of The Salvation Army's Aotearoa New Zealand Fiji Tonga, and Samoa Territory.

### **General comments**

6. Balance is critical here. That is, we support the intent of the Bill, but we cannot support the Bill overall because of the reasons outlined in the following paragraphs. The Salvation Army recognises that robust regulation is needed for the charities sector. But regulation should be an enabler to a well-functioning, innovative and independent charities sector. In recent years, the government has increased compliance and reporting requirements on our sector. And there is an increasing appetite on centralising services and sectors more to central government bureaucracy which is challenging. There is some value to this. But overall, we submit these are not helpful because there are more regulatory burdens to focus on and less localised solutions to local problems that develop. This is even more important in the charities sector where there are mostly smaller charities operating in local environments with extremely limited funding. In that context, any legislative change should help enable and facilitate change rather than create new levels of bureaucracy.
7. Additionally, we believe it is important to comment here on the role of religious and Christian charities in the charities sector and in wider civil society. New Zealand is becoming an increasingly secular society as evidenced by recent Census results and independent studies like the Faith and Belief Study.<sup>1</sup> It can be argued that the worldview, values, role, and place of people of religious faith is being challenged in today's New Zealand. In that context, we contend that religious and Christian charities and churches are crucial to a healthy liberal democratic society, especially when it comes to serving and supporting more vulnerable people and whanau with high, complex needs. If these religious and Christian charities were not doing the massive amounts of work in housing, addictions treatment, gambling harm treatment, homelessness, family harm, transitional housing, food security, financial mentoring and numerous other areas, there would be major gaps in the wellbeing of people and whanau in New Zealand. Long term sustainable change, especially for more vulnerable and marginalised whanau through the tireless work of charities with a Christian mission and/or heritage such as the Methodist Mission, St Vincent de Paul, Catholic Social Services, Presbyterian Support, Anglican Care Network, Vision West, The Salvation Army, and many others cannot and should not be ignored, or underestimated, in our increasingly secularised New Zealand society.

### **Independent first principles review**

8. The absence of an intentional, comprehensive review of the core principles of the principal Act is a glaring omission in this review of the Act. In our original submission, we emphasised

this request, calling for an independent review of the Act, preferably by the Law Commission.<sup>ii</sup> Some of the key areas excluded in the original review (*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; advocacy*) were the key areas we hoped would be reviewed when Labour made an election promise for a first-principles review of the principal Act. A comprehensive review was promised and is desperately needed, not the cosmetic tinkering on the edges in the current Bill. We submit that this Bill be pulled from Parliament and a comprehensive and independent review be undertaken by government.

## Appeals process

9. This is a large part of the current Bill. Our primary views about this section are:
  - a. We oppose the new section 58A which limits rights for a charity to appeal to the Taxation Review Authority (TRA) alone. We acknowledge there might be an intent to simplify the appeals process given the cost and complexity by providing an avenue just to the TRA. However, we believe maintaining a right of appeal to the High Court, regardless of the expense or complexity, is crucial to natural justice and gives charities fighting against a decision under the principal Act confidence of an independent judicial process. If the appeals avenue remains to the TRA in the Bill, we submit that charities should have the option to choose whether to appeal to the TRA or to the High Court against a Charities Board decision.
  - b. We oppose any erosion or reduction in appeal rights for charities in this Bill, particularly as set out in proposed sections 55A and 58A. In our reading of these sections, and surrounding sections, the Bill reduces a charity's right to appeal to four decisions or areas of Charities Services decisions. This limits the number and scope of appeals that charities can make on contentious decisions. We strongly contend that charities should be able to appeal all decisions made under the principal Act. We have advocated for this in previous submissions to this Review process, especially when there is a lack of transparency in Charities Services and the Charities Registration Board. There should be no reduction in the number or scope of appeals a charity can make under this Bill and we suggest the amendment of these provisions to ensure this fundamental right to appeal all, and not just four, decisions made under the principal Act.
  - c. We acknowledge there is some value in having a right of appeal to the TRA. In our 2021 follow up submission to the DIA, we stated that we questioned the reference to the TRA as a potential appeals authority or pathway before the High Court because the *clear focus on tax-related issues might be problematic given some of the current critical issues are around values, charitable purposes, and advocacy. We are unsure if this authority has the capacity to hear and decide on broad issues beyond tax.*<sup>iii</sup> We still have this concern with the TRA. We are unable to suggest another more suitable alternative for hearing appeals at this stage. At the select committee stage, good alternatives might be suggested. We are also weary of creating more levels of bureaucracy when there is already the need for charities to navigate through the Charities Services and Board.
    - i. One issue here is that the Act governing the work of the TRA would have to be significantly amended to effectively cover the work of charities.

Connected to this is the fact that there is critical information missing in this Bill around the work of the TRA. Charities Law expert Sue Barker captured these gaps well, stating that *the provisions of the TRA Act that apply the rules of evidence to the TRA as if it were a court, is not replicated in the Bill. In addition, proposed section 58G(2) enables further TRA procedures to be prescribed by regulations, the content of which we have not seen. The intention of the Bill appears to be to devolve to an internal “objections” process, conducted and controlled by the Charities Registration Board (“the Board”) and/or Charities Services, followed by only an attenuated appeals process. However, the Board and Charities Services are not judicial, and they are not subject to the rules of evidence: this means that their findings of “fact” from their internet searches will remain impossible for charities to properly challenge, causing the entire process to remain unfairly tainted in favour of the original decision-maker. The proposed objection process will therefore only add further cost and delay, while not addressing the fundamental issue* (emphasis added). These gaps of information must be filled to give charities greater clarity and confidence in this appeals process.

- ii. If the pathway for appeals remains the TRA, we again stress the importance of keeping a right of appeal to the High Court as submitted in paragraph 9(a) and (b) of this submission. Additionally, we submit that any rules or regulations governing the TRA’s work in this charities space need to be fit-for-purpose and developed alongside charities themselves. Finally, the importance of oral hearings for charities, available for other complainants under the current TRA rules, must be available to charities appealing a decision under the principal Act.

### Charitable purposes reviews

10. We strongly oppose the clause 13 of this Bill (which amends sections 22 and 24 of the principal Act). There is still a lack of real clarity with the assessment criteria used by the government to decide that Family First failed to meet the legal test for charitable registration in *Attorney-General v Family First New Zealand*. In our view, there is a very subjective test and approach being applied by the Charities Services and Board in these decisions, which are then seemingly repeated and followed in the courts. We oppose any subjective assessing or reviewing of a charity’s purposes by DIA. It is disingenuous to legislate to conduct these subjective charitable purpose reviews, but then completely exclude any review of the core or first principles of charitable purposes in this government’s drawn our review process (see paragraph 8 of this submission). Clause 13 effectively codifies this subjective process through a legal backdoor by allowing for DIA to *obtain any other information or document to support the charitable purpose of the entity*.<sup>iv</sup> If an entity has already qualified for the charities register under the principal Act, then there is no need for regular reviews of their charitable purpose until there is clearly a legal breach of the charity’s legal obligations. Going after charities, seemingly because there is a subjective disagreement with their views without providing a clear test or establishing a more fundamental first principles review is unfair and does not give transparency and confidence to the wider charities sector.

## Reporting requirements

11. As mentioned above, The Salvation Army is a large Tier One charity and so we can better absorb the reporting requirements placed on charities compared to smaller entities. We are supportive of the intent in this Bill to simplify the reporting requirements, especially for smaller charities. Still, in our experience, the reality for most smaller charities is compliance and reporting functions still require significant investment for these entities, even if there is an adjustment under the reporting exemption enshrined in this Bill. We are in favour of streamlined and simplified reporting for all charities, particularly smaller ones. For larger charities like The Salvation Army, although we are bigger in size, the compliance and reporting requirements are still significant and potentially burdensome. The more spent on compliance under the principal Act, then this impacts on the spending and resourcing of activities to meet a charity's charitable purposes. It is important to remember that charities are entities developed for the greater good in society and should not be treated per se as corporate businesses. At the same time, financial integrity is critical to engender greater trust in the sector. The level of exemptions for smaller charities needs greater discussion at the select committee process, particularly involving the External Reporting Board. Also, we have noted some concern in the public discussions on entities reorganising into smaller charities to fall within the finalised exemption threshold. This is an issue that requires close monitoring moving forward.

## Officers and Governance

12. We are supportive of the amendments around the role of officers and the wider governance of charities. However, there are some areas we believe need greater clarity or amendment at the select committee stage.
- a. The Bill's definition of an officer under clause 4 (*anyone who can exercise significant influence over the administration of the charitable entity*) is unnecessarily broad. There is some helpful narrowing in the definition in clause 4(1)(b) and also in clause 36A and 36B of the Bill. But having a broad definition and not refining it to those who have fiduciary duties to the charitable entity is not helpful. There are many people, both church members, volunteers or staff in The Salvation Army who could, because of their mana, reputation, or sheer influence, fall within this Bill's definition of officer. We recommend this definition be narrowed to those with clear legal duties because of their governance roles for the charity.
  - b. We question the necessity of including this definition when the fiduciary or legal duties of these roles for trustees/governors of charities are already defined in other legislation. Why not just refer to those definitions set out in well-established Acts? If this was the case, then the definition in clause 4 becomes unnecessary.
  - c. In terms of broader governance, we do not believe that clause 42G about annual review of governance policies is needed in this Bill. Firstly, this kind of review process should be left to the Board of that charity to do internally and within their own policy review process. This is not a prescribed function from a government department. Secondly, smaller charities could again be disproportionately impacted if this provision remains because they often have volunteer Board members from the community who are swamped with several responsibilities in both the charity and the wider community. Clause 42G adds another unnecessary requirement on charities, which would add greater compliance functions seems to go against the

core intent of this Bill. We recommend the removal of this provision. We also believe greater investment in good governance is important for the charities sector. The work of Community Governance<sup>v</sup> and other similar initiatives should be supported more so that trustees of charities, especially smaller ones, can be enhanced as they fulfil their charitable purposes.

### Charities reserves policy

- 13.** The Salvation Army is concerned about the proposed increase in reporting of reasons for accumulated funds beyond what is already stated in our audited financial statements and annual returns, as required under existing compliance responsibilities. In the Beehive press release on this Bill, Hon Priyanca Radhakrishnan states: *Alongside the introduction of the bill, we are also working on non-legislative changes to further improve the sector, including requirements for larger charities to report reasons for accumulating funds.*<sup>vi</sup> We have not seen of these non-legislative changes in draft form.
- a. This is an unnecessarily invasive process that again buys into the growing media sensationalism around charities and their resources.<sup>vii</sup> Additionally, this also is directed to religious and Christian organisations and how they manage and use their resources. A reserves policy is the remit of the charity's own Board and should not be prescribed or unnecessarily scrutinised by a government department. Reserves are evidence of good, ethical fiscal management. Charities should not be vilified or opened-up to media sensationalism just because they have been good stewards of their limited resources. This is not the business of the government or media.
  - b. In our context, any such invasive requirement to report on our reserves would create more reporting burden for us. For The Salvation Army as an exceptionally large charity, there are multiple reserves held across the country for numerous smaller projects such as building renovations, a new vehicle for community ministries or multiple other initiatives. Reporting on all of this would be onerous and unnecessary. For large charities especially, it is likely to be difficult to present this information in a meaningful way is that helpful to users. Additionally, we submit this approach could lead to more media 'witch-hunts' of religious and Christian charities in our increasingly secularised society for their good fiscal management. That approach is unhelpful to these entities who are already trying to meet their charitable purposes with their limited resources. We are not against transparency here. But if we have already met all of our other fiduciary and financial responsibilities required of us, then why add yet another layer of bureaucratic reporting for no good, rational reason? Our comments here should be read in connection specifically to paragraphs 6, 7 and 11 of this submission.

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<sup>i</sup> Available at <https://faithandbeliefstudynz.org/>

<sup>ii</sup> Available at <https://www.salvationarmy.org.nz/article/submission-modernising-charities-act-review-2005>

<sup>iii</sup> <https://www.salvationarmy.org.nz/article/submission-modernising-charities-act>

<sup>iv</sup> Clause 13 of the Bill.

<sup>v</sup> <https://communitygovernance.org.nz/>

<sup>vi</sup> <https://www.beehive.govt.nz/release/more-transparency-less-red-tape-modernised-charities-sector>

<sup>vii</sup> Some examples: <https://www.stuff.co.nz/business/125608185/taxexempt-charities-may-have-to-justify-sitting-on-millions-of-dollars-in-funds>; <https://www.stuff.co.nz/business/128814417/charities-will-soon-have-to-justify-sitting-on-large-amounts-of-wealth>