



Do charities need to be “regulated”?

11 April 2019

Background

- Bouquets
- Fundamentals
- Original Charities Bill
- Labour Party policy

Key message

- Terms of reference too narrow
- Timeframe too short
- **We risk making the situation worse**
- The issues in this area of law are complex, and their impact far-reaching
- We need an independent **Law Commission review**, as occurred with incorporated societies and trusts

Background (cont'd)

- Charities “regulator”?
- Regulation – wide concept
- Other jurisdictions
- The Charities Act does not use the term

Accountability, not “regulation”

- **Registration, reporting and monitoring:**
 - annual returns, notify changes
 - an **information and disclosure** regime
- Monitor charities to ensure they act in furtherance of their **stated** charitable purposes
- “Serious wrongdoing”

Current purposes of the Act

- (a) to **promote public trust and confidence in the charitable sector:**
- (b) to **encourage and promote the effective use of charitable resources:**
- (c) to provide for the **registration** of societies, institutions, and trustees of trusts as charitable entities:
- (d) to require charitable entities and certain other persons to comply with certain obligations:
- (e) to provide for the Board to make decisions about the registration and deregistration of charitable entities and to meet requirements imposed in relation to those functions:
- (f) to provide for the chief executive to carry out functions under this Act and to meet requirements imposed in relation to those functions.

Considering purposes

“But it seems to me that the **sectors’ affirmative purposes and roles in and contributions to their respective societies should precede regulation thereof**, especially in common law jurisdictions.

Stated differently, why...increase public trust and confidence? Why pursue effectiveness and accountability? Even in a tax- and compliance-based system such as in the US, a prerequisite should be ensuring that **respect for boundaries protects against harmful regulation and regulators infringing on or interfering with the fundamental roles and purpose of the charitable sector and its members....**

- John E Tyler III

Considering purposes (cont)

...Without that grounding at the forefront, there are non-tenuous risks that the charitable sector gets perceived and regulated as if a “loophole” or as a means for government abdicating its responsibilities and/or using the sector to address fiscal deficits.

It may be that ...regulatory purposes of ensuring effectiveness and accountability threaten to morph into **over-reaching exercises of governmental power in the name of enhancing trust and confidence.**

“At what cost,”...may be important to have as an ever-present policy and regulatory question about the sector, especially with regard to **intangible, non-financial costs** to common law, **rule of law rather than rule of power**, and other contributions of the sector and its member organisations to individuals and society.” [Emphasis added]

- John E Tyler III

Related issues

- Sanctions
- Funding

Other suggestions

- Monitoring agency
- Charities Registrar
- Supervisor
- Oversight body
- Administrator
- An eponymous term

FYI:

- **Community engagement meetings**
- **Issues paper/summary paper** – please email: davehendersonnz@gmail.com or susan.barker@charitieslaw.co
- **Facebook** page: Charities Act Review 2019: <https://www.facebook.com/groups/1932023316889903/>
- **LinkedIn group: NZ Charity Law**
- **MAKE A SUBMISSION** – by 30 April 2019?



Thanks for listening!