
CHARITIES, DONATION CAPS AND THE MISSING ANALYSIS

Prepared by Dr. Juliet Chevalier-Watts & Steven Moe

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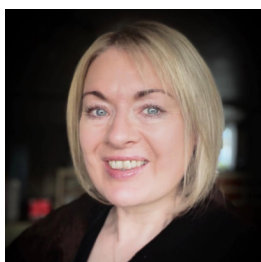
CHARITIES, DONATION CAPS AND THE MISSING ANALYSIS

PREPARED BY DR. JULIET CHEVALIER-WATTS & STEVEN MOE

The May budget saw an announcement which surprised the charitable sector in Aotearoa New Zealand. Simply put, there is to be a new cap on donors who give above \$100,000 in a year meaning they will only be able to claim back a tax credit of \$33,333,333 from April 2027.

The [IRD comment](#) is that “the cap would affect about 350 donor entitlements (or 0.1% of donors)”. The implication is that the impact will be minor and that charities will continue on.

But there are some sound policy reasons why the change needs to be reconsidered which we set out in this paper.



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The Background to the Change: What Lies Beneath

The changes to be borne by the charity sector came with a sense of inevitability – they were announced rather than being properly consulted on. Reference is made to consultation but this particular change was not a big feature of that consultation process.

Stepping back to recent history, changes were signalled in early 2025 by the National Government when, among other things, the Government sought public feedback on particular third sector tax concessions, and one of the matters considered was both tax on business income for charities but also on donor-controlled charities (www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/consultation/2025/taxation-and-the-not-for-profit-sector.pdf?modified=20250303232403). Whilst we might say that the changes wrought could be worse, and there is truth to that, there is still a definite sense of unease in relation to the manner of the changes to be implemented and the implicit dialogue that came with the change, although we just focus on two matters here.

The first one relates to the cap on donation credits, and the second relates to a point made by the Government where it appears to have said “the quiet things out loud”. Let us explain what we mean by that. To do so we will start with the second point, which may have gone unnoticed in light of the headline grabbing attention the first rightly commands. However, that second point is worth highlighting.

“Removing Certain Charitable Purposes”?

In the “Regulatory Impact Statement: Taxation and the not-for-profit sector: Changing donation tax credit policy settings” (RIS Not-for-profit), which is dated before the announcement, IRD noted that other options apart from a cap on tax donation credits were considered and rejected, and one of those considerations was “removing certain charitable purposes” (“Regulatory Impact Statement: Taxation and the not-for-profit sector: Changing donation tax credit policy settings”, Inland Revenue Te Tari Taake 12 May 2026 at 2, www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/publications/2026/ris-changing-donation-tax-credit.pdf?modified=20260528044802). From a theoretical or indeed philosophical point of view, this is a concerning statement to make because it is evident that the Government was considering removing at least one legally-recognised charitable purpose.

The reason this is disconcerting is because New Zealand only has four legally recognised purposes, in comparison with, for example, the United Kingdom, which has 13 such purposes (Charities Act 2011, s 3 (UK)). Thus if New Zealand

were to lose even just one purpose, this would have a dramatic impact on the ability for a significant proportion of charities to continue to undertake their vital community work. Further, it is not clarified to which purpose or purposes the IRD was referring, leaving a sense of unease in the air as to which purposes and therefore which communities have been on the cusp of significant change and loss of support.

Of course, one might argue that it was made clear that removing “certain charitable purposes” was not progressed but the very fact that IRD even signalled that such a change was prioritised in their decision-making indicates that charitable purposes may fall under the microscope at a later date. On that basis, we should remain alert to changes to the charity sector via stealth that would have far reaching, and undoubtedly negative consequences.

Caps and Consequences

We turn now to the first point, that of the cap on donation credits and the questions that this raises. It was asserted by the Government that “the purpose of donation tax credit is to encourage and reinforce charitable giving” (RIS Not-for-profit at 1), but in the very same breath, it was opined that the “policy settings could be better targeted to improve value for money...” (RIS Not-for-profit at 1). In our view focusing on providing “value for money” is the wrong approach. Yes, some charities might run as businesses but that ignores the underlying ethos of all charity work and endeavours - supporting those in need.

As noted by Williams J in the Supreme Court case of *Attorney-General v Family First New Zealand* [2022] NZSC 80, [2022] 1 NZLR 175 at [165]:

All societies place a high value on non-transactional giving to community; that is, on giving to support one's wider community without expecting equivalent value in return (at least not in this life). It is one of the key ways in which social cohesion is supported. So, all cultures ... (and therefore all legal systems) encourage such giving, whether by requiring it as a condition of membership or by incentivising it within the life of the community.

Therefore for the Government to place such a focus on ensuring value for money within the charity context, and particularly in relation to donor credits, undermines the very existence and footings of charity.

It also signals that cost cutting is at the forefront of their decision-making, and this surely can only result in downstream negative impacts on the very communities that so urgently need support in these financially-constrained and difficult social and economic times.



Reducing the amount of funding that may flow to charities will ironically increase the need for more (costly) Government intervention. Further, it must be asked, value for money in whose opinion, and how defined? We would argue at the very least that much of the mana of charities and the mahi carried out by charities and the support received goes beyond financial benefits. Indeed, as Williams J further noted in the *Family First* case, New Zealand's first law of Tikanga Māori has a close analogy with charity, as it (*Attorney-General v Family First*, above, at n 187):

...promotes social responsibility and cohesion by placing a high value on giving to one's whānau, hapū or iwi, and to manuhiri (one's guests). Core tikanga values reflect, or at least approximate, the multivalent English language idea of charity — aroha for charity itself, whanaungatanga for obligations to one's community, kaitiakitanga for the responsibility to nurture community and place, mana for individual and community dignity, manaakitanga for generosity to outsiders and tika for social justice.

Thus New Zealand's very own underlying culture and first legal system promote charity over and above financial constraint, which is contrary to that which the Government is implementing in relation to the cap on donations.

Some Practical Implications of the Change

It has been argued that the cap will not impact a large number of charities per se but in reality, the ripples resulting from the changes will be far reaching, and no doubt negative for the third sector. First and foremost, such tax incentives seek to encourage philanthropy but the Government itself has observed research relating to this matter is limited and "donor responsiveness, especially for large donations, is very dependent on the specific donor" (RIS Not-for-profit at 11).

If that is the case, then we would assert that research should be conducted as a matter of urgency before such far-reaching changes are wrought so that evidence-based decisions are undertaken, and ones that will benefit the third sector, rather than risk undermining it further, especially in such a fiscally-challenged environment.

Not only is there a lack of data to support such changes, but the aforementioned ripples as a consequence of such changes should be highlighted. In practice, the donor cap is likely to mean:

- donors could see little value in their philanthropic support, and indeed may view the caps as actually discouraging them from supporting particular causes;

- it could result in donors making smaller donations to charities.
- while those impacted maybe few, they make up a disproportionately large amount of total giving (around 10 per cent).
- this will limit the ability for charities to appeal for those large donation amounts which make a big difference to a charity.
- for those charities that have historically come to rely on the generosity of large donations, the change in donation behaviour may have dire consequences for their ability to pay wages, repair assets, or carry on programmes;
- this will likely discourage family foundations from being set up which often start with a large amount to get them going and who exist to benefit the community;
- some donors may now view the tax changes as too complex to think about when determining which charities to donate their funds to, especially when the financial climate is currently so uncertain, which will likely then have negative consequences for the charity sector and risks deserving causes not receiving much needed funds that otherwise would have been freely donated.
- while this may only affect a small number of donors they often contribute in large ways to projects that need a lot of support (such as building programmes) and
- alternatively, these wealthy donors may already spread their donating across many charities which means even those who think they will be unaffected (as no one has given them \$100,000 or more) may have the amounts they receive reduced.

Surely donations and generous behaviour, no matter what the size, should be fully encouraged and supported by the Government. Without all types of financial support for charities, the sector will adversely suffer, particularly when all parts of society are feeling so much economic pressure.

But what about those 'Donor Controlled' Charities?

The narrative about why this change is necessary appears to be laid at the feet of some charities that receive large amounts from their founders who set them up. If there is real concern that some structuring is occurring to take advantage of the system then our view is that those examples should be dealt with on a case by case basis rather than an edict that applies to every donor. It is not beyond IRD's scope to identify the 350 individuals it says

will be affected. Alternatively, there are existing laws in place which could be enforced and for example, require trustees to act in accordance with their fiduciary duties, as required under the Trusts Act 2019. However, having a vague reference to "integrity" without understanding what the real issues are makes it difficult to justify the wider change that impacts all.

Overseas Trends and What They Show

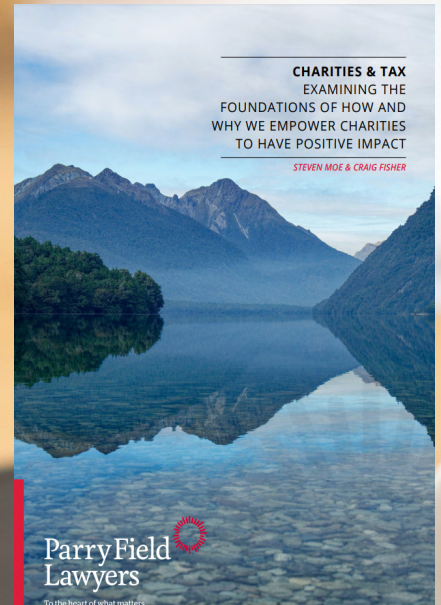
This policy neglects to give proper recognition of the difference that generous donors, and large scale gifts can make to charities. It is like holding an umbrella as you wish someone luck and send them out into the pouring rain. It is the equivalent of saying that we want people to support charities and be generous ... but not to be too generous and not too supportive. It will have a chilling effect on the whole charitable sector. In comparable Commonwealth jurisdictions such as Australia, Canada and the United Kingdom the policies are heading in the other direction, with encouragement being given so that more people give rather than adding caps on giving.

Examples of other policy settings are outlined in the recently released "World Giving Report" (www.worldgivingreport.org/donor-insights) where one of the factors identified as supporting giving is "...a heightened perception that the government encourages giving". To introduce a cap on total donations has the opposite effect. Rather, it is likely to lead to less donations flowing to charities who need the funding to do their good work.

Conclusions

Generosity and support of society is part and parcel of charity, and is underpinned by Tikanga Māori. Without such charity, society suffers, but particularly those sections of society that so urgently need support and succour. Implementing changes that will likely impact on the decision-making of donors is not likely to benefit Aotearoa New Zealand as a whole. On balance our view is that it is short sighted to reduce the options for charities to obtain donations. Our hope is that this change is reversible if decision makers reflect on its true impact and seek additional data so that informed decisions can be made which enhance the amazing work of the charitable sector.

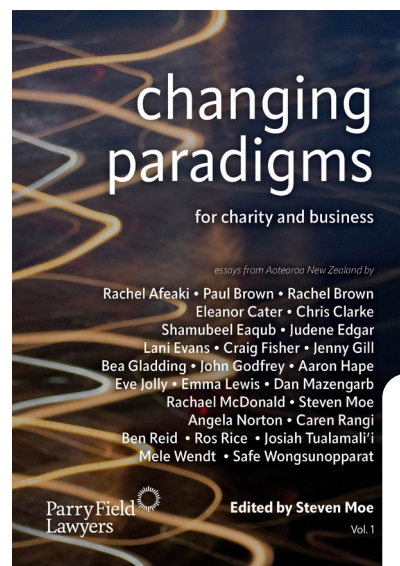
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