



Research Note

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The Institutional Role of Charity Regulators in Bringing Charities to Account: An International Comparative Study of Charity Regulators in New Zealand, Australia, Canada and England and Wales

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Abstract: Accountability in the charity sector continues to be important, especially since charity numbers continue to grow regardless of the economic cycle. Charity regulators play a critical role in managing the charity sector as its primary task is ensuring compliance with the regulatory framework. However, it is also important to evaluate whether the practices and procedures of charity regulators are effective within the broader context of charity accountability. This paper aims to explore charity accountability from the perspective of charity regulators. In common law countries, the charity regulator has oversight over the charity sector and, therefore, has the opportunity to enhance charity accountability. Through the lens of institutional theory, this paper provides an international comparative study of New Zealand, Australia, Canada and England and Wales, all of which share a common law heritage. This study demonstrates how the state regulators in each country have applied different mechanisms of charity accountability by institutionalising the norms and standards required from charities. By identifying and comparing the countries, this paper reveals whether some institutional practices by some regulators have been more effective than others in bringing charities to account.

Keywords: charity; charity accountability; charity regulator; charity compliance; accountability

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1 Introduction

New Zealand, Canada, Australia, and England and Wales recognise the importance of accountability in the charity sector. Consequently, they agree on the need for increased state regulation and monitoring of charities to safeguard the public interests. This paper uses institutional theory to compare how each country's charity regulator influences accountability, highlighting their various approaches. This research area remains underexplored, with previous studies focusing mainly on charity financial statements (Flack and Ryan 2005; Sinclair 2010) and information disclosures made by charities (Dimitrov 2017; Jetty and Beattie 2009).

2 Charities and the Institutional Perspective

State legislation, regulations, and policies have defined how charities are held accountable (Zucker 1987).¹ This ensures charities operate effectively by enforcing minimum best practice standards and fostering healthy stakeholder relationships (Doub 1976). In the process, these actions have restored public trust in charities (Zucker 1987) and have also coercively institutionalised them (Brody 2012).

Charity regulators are responsible for addressing non-compliance issues and enforcing legislation. Thus, understanding the connection between charities, the government, and the general public as determined by the charity regulators is key (Nicholls 2010), for it is the charity regulators that establish a compliance model that can effectively address various types of non-compliance. Furthermore, the options for dealing with non-compliance must be appropriate and proportionate to the non-compliance they are intended to address.

New Zealand, Canada and Australia all share a common law history with that of England and Wales² and have taken similar institutional approaches to charity accountability by converging on similar policies and practices (DiMaggio and Powell 1983). Despite their shared legal heritage, charities in these four countries have different levels of accountability due to varied regulatory approaches. This article analyses the charity regulation framework, covering financial reporting thresholds,

¹ Charities are part of the non-profit sector; however, to register as a charity, the entity must meet the legal test of 'charitable purposes'. All common law countries have developed and codified charitable purpose test into their charity statute.

² There are three charity regulators in the United Kingdom – Charity Commission for England and Wales, Scottish Charity Regulator and Charity Commission for Northern Ireland – this article only deals with the Charity Commission for England and Wales.

asset locks, and access to information. All charity regulators mentioned in this paper share a common charity registry and registration process.

2.1 Charity Registration

Registering as a charity is essential as it shows the public that the organisation meets state standards and ensures a fundamental level of accountability (Tilling 2004). Furthermore, charity registration is a status granted to any qualified entity, regardless of its legal form, as charities can take on various legal structures (Fraser and Blackmore 2022). A charity registry shares essential information about charities, including their names, addresses, registration numbers, financial statements, and founding deeds. The charity registration process involves four key stages: choosing a formal name and legal structure, appointing officers, and defining the charitable purpose. All common law countries recognise charitable purpose(s), as defined in Pemsel's case,³ as essential for registration, though some have recently modified or expanded their definitions.

However, many people mistakenly believe they can easily find a charity's information in the charity registry. This is often because the charity's formal name on the registry differs significantly from its commonly known name. For example, St Johns [the common name] is a charity operating in Australia, New Zealand, Canada, England, and Wales. However, a search on each country's charity registry failed to find St Johns because its formal name is "*The Priory of in [Country name here] the Most Venerable Order of St. John of Jerusalem*". In this example, regulations have restricted public access to charity information instead of encouraging it.

The charity regulator can hold charities accountable by imposing consequences for non-compliance after registration. However, there are concerns about the effectiveness of charity regulators in ensuring accountability. Moreover, there has been little discussion in the literature regarding the challenge faced by charity regulators in simultaneously enforcing charity regulation and promoting the interests of the charities they monitor. This could go some way to explain why, in the past, charities in some common law countries have not faced penalties for failing to produce financial statements (see (Bird and Morgan-Jones 1981) UK study as an example of this)). Charity regulators respond to public demand for oversight but have often provided minimal monitoring in the past, prioritising charities' continued operation and success.

In the past decade, all four countries have seen significant changes to their charity regulators. Analysing these changes can help us understand how charity accountability has evolved and identify which has most effectively improved charity monitoring.

3 *The Commissioners for Special Purposes of the Income Tax v Pemsel* [1891] AC 531 ('Pemsel's Case').

3 New Zealand

Public scrutiny of charities has prompted the New Zealand government to regularly reform the sector, including through major legislation enacted in 2005 (NZ) and the establishment of the Charities Commission (Salamon and Anheier 1997; Tennant et al. 2006, pp. 1–2). The Charities Commission was an independent agency that sought to strengthen trust and confidence in New Zealand’s charitable sector following significant failures and fraud incidents (Gousmett 2009).

However, the accountability of charities failed to improve during this time, and as a result of cost-cutting measures, the Charities Amendment Act (2012) (NZ) dis-established New Zealand’s Charities Commission and the Commission’s functions were transferred to the Department of Internal Affairs in July 2012 (Blumberg 2012). The 2012 law reform established Charities Services as New Zealand’s charity regulator within the Department of Internal Affairs. Thus, New Zealand no longer had an independent charity regulator. Charities Services’ key responsibilities are (Ministry of Business Innovation and Enterprise 2023);

- Maintain and monitor a register of charities.
- Receive annual returns and monitors the activities of charities.
- Promote public trust in charitable organisations.
- Provide education and assistance to the charitable sector.
- Encourage best practices in governance and use of resources.
- Stimulate and promote research about the charitable sector.
- Provide advice on matters relating to charities.

In 2018, New Zealand’s Department of Internal Affairs⁴ reviewed the Charities Act to modernise it and improve the performance of Charities Services (Department of Internal Affairs 2022). Notably, the challenges of wealth accumulation were treated as optional reporting,⁵ and asset locks⁶ were largely overlooked in the policy changes (Department of Internal Affairs 2022; Dyhrberg Drayton 2022).

Notably, Charities Services ensures compliance for registered charities. However, registration in New Zealand is voluntary, making it hard to determine the number of charities in operation. Consequently, academics believe there are many more unregistered charities than registered ones. Currently, there are more than

⁴ Department of Internal Affairs has oversight of the charity sector in New Zealand.

⁵ Only larger charities found in tiers 1–3 will be required to explain their accumulated funds – it is not a legislative change.

⁶ Asset locks are procedures that ensure the effective protection and accountability of a charity’s assets.

28,000 registered charities,⁷ but it is estimated that more than 96,000 unregistered charities are operating in New Zealand at any one time (Poirier 2013; Stevenson 2013). The Charity regulator must now publish all declined and deregistered decisions and create a transparent process for charities to contest these decisions (Dyhrberg Drayton 2022). However, deregistered charities are also beyond the jurisdiction of Charities Services.

Unregistered charities are also outside New Zealand's charity regulator's jurisdiction but can still receive tax exemptions through donee status. Donee status is approved by Inland Revenue (NZ), allowing entities that may not meet the charitable purpose criteria but have benevolent, cultural, or philanthropic goals to pass tax benefits to their donees (Charities Services 2023). Entities with donee status include Māori or Pacific groups that receive community donations but are not registered charities (for Māori entities, this is in the form of koha⁸).

Charities Services can investigate and monitor charities and may remove a charity from the register for serious wrongdoing or repeated non-compliance. Investigations such as fraud are beyond the authority of Charities Services, which is why the police oversee charity fraud. This highlights that Charities Services has limited power to regulate practices outside the Charities Act.

Charities Services promotes best practices among New Zealand's registered charities by providing educational resources on its website. While it does not interfere with trustee board decisions, non-financial reporting, or charity affiliations, it aims to model good practices online. Its primary focus is on compliance with registration and financial regulations, but it also encourages practices that attempt to go beyond the Act's requirements.

3.1 Financial Statements

In April 2015, the External Reporting Board introduced financial reporting standards for registered charities, although these were mainly designed for not-for-profit and public-sector entities rather than charities (Deloitte 2015). Prior to this, many New Zealand charities did not submit financial statements with their annual returns. In the 2009–2010 financial year, about half of registered charities filed their statements on time (Charities Commission (NZ) 2010). Furthermore, charities could choose how to format their financial statements, and failure to file them did not necessarily result in losing their registration (Sinclair 2010).

⁷ This is no longer easy to discover because the Charity Services website no longer has a count on its homepage of its website.

⁸ Koha is usually a monetary donation.

The 2015 changes mainly affected registered charities with expenditures over \$140,000, as this determined the requirement for full financial statements. Since that year, charities have been required to produce financial statements in compliance with financial reporting standards and New Zealand GAAP. A tiered system based on annual expenditures was established to categorise charities. The tiers were as follows:

- Tier 1 (over \$30 m in annual expenditures or has public accountability)
- Tier 2 (Under \$30 m in annual expenditures – no public accountability)
- Tier 3 (under \$2 m in annual expenditures – no public accountability)
- Tier 4 (under \$140 K in annual expenditures – no public accountability)

Commentators observed that introducing financial reporting standards would have minimal impact on the sector, as large charities in tiers 1 and 2 were already producing comprehensive financial statements to secure government funding.

In January 2022, further changes were introduced, which saw the larger charities (again found in tiers 1 and 2) required to produce service performance reports⁹ and small charities (found in tier 4) exempt from the financial reporting standards. However, many large charities were already producing performance statements as they are required for funding applications (alongside financial statements) (Hankinson 2022). The smaller charities, on the other hand, welcomed the change (Fisher 2022).

Sinclair (2010) identified that large New Zealand charities often purposely did not consolidate their accounts (to include asset-holding subsidiaries, for example) and/or did not declare associated interests [related party interests] if there was an entity(s)-to-entity(s) relationship (like profit-making arms). This situation meant some charities appeared financially poor instead of asset-rich.

The 2022 reporting standards also introduced the *control* principle, requiring charities affiliated with for-profit organisations to produce consolidated financial statements. In New Zealand, these commercial arms of charities are not required to pay tax, even if consolidation is necessary (Duncan Cotteril 2019). Some charities in New Zealand have substantial assets, with registered charities estimated to hold over \$80.2 billion (Jones 2022). Large charities in New Zealand hold assets equivalent to 7 % of the nation's GDP, yet lawmakers seem to ignore the need for asset locks. These locks would ensure that charity assets are used for public benefit rather than benefiting individuals, even if the charity ceases to exist.

Charities recognise that profit-generating divisions are essential for financial stability and future fundraising efforts, as noted in the 2022 Charities Act review submissions (Department of Internal Affairs 2022). Profit-making arms usually

9 PBE FRS 48 – a statement of service performance.

operate as separate legal entities. Charities Services allows group registrations, and Inland Revenue (NZ) grants tax exemption status to these groups upon notification (Inland Revenue (NZ) 2008). The tax-exemption status further reinforces that any profits must be used for the charity's charitable purposes. The Salvation Army is an example of a group registration.

Recent amendments to the Charities Act 2005 offer minimal guidance regarding the non-financial information provided by New Zealand charities. This type of information is usually found in annual reports. Since charities are not required to produce annual reports, only larger charities in tiers 1 and 2 tend to submit them. Non-financial information provides explanations and context for a charity's work because financial information does not always provide a complete picture of what a charity does (Dimitrov 2017). However, this is another area New Zealand's lawmakers have entirely overlooked.

4 Australia

For a long time, Australia lacked a national charity regulator, with state and territory governments overseeing charities, excluding tax matters.¹⁰ The Australian Tax Office oversaw tax concessions for charities, granting them to entities with charity status (Stephens 2017). Australian charities had minimal accountability, as they did not need to submit annual returns and could self-assess their tax status.

Since 1995, government inquiries into the not-for-profit sector¹¹ have made recommendations for change, but neither the federal nor state governments accepted them, turning charity accountability into a political football (Stephens 2017). Consequently, establishing any form of regulator was challenging (Pascoe 2017). Finally, in July 2012, Australia established the Australian Charities and Not-for-profit Commission (ACNC) (Australian Charities and Not-for-Profits Commission Act 2012) (the Australian Christian Churches 2012).

The ACNC is an independent federal body that decides which organisations can register as charities. Charities must register with ACNC to keep tax privileges from the Australian Tax Office (ATO). This rule also affects other not-for-profits registered with the ATO but not with the ACNC. Therefore, more not-for-profits are forced to register with ACNC than ever before because, unregistered, they cannot apply for tax exemption. Before the creation of the ACNC, not-for-profit organisations could avoid

¹⁰ Australia has state and territory governments with an overarching federal government.

¹¹ Notably, the non-profit sector includes any nonprofit entity and can include any community, voluntary, welfare, or nongovernmental organisation. In contrast, a charity has to fall within the charitable purposes criteria and be registered.

any demands for accountability because no specific legislation or regulation applied to them (Koh 2021). Not-for-profits, like sporting groups, recreational clubs and community service organisations, are examples captured by the ACNC Act¹² (Australian Institute of Directors 2013; Koh 2021).

The key objectives of the ACNC are (Australian Government 2023).

- Registers organisations as charities
- Helps charities understand and meet their obligations through information, guidance, advice and other support.
- Helps the public understand the work of the not-for-profit sector through information, guidance, advice and other support.
- Maintains a free and searchable public register so that anyone can look up information about registered charities.
- Works with state and territory governments (as well as federal, state and territory government agencies) to develop a ‘report-once, use-often’ reporting framework for charities.

Only the ACNC Commissioner can decide if an organisation is charitable or not-for-profit for tax purposes (Koh 2021; ProBono News Australia 2012). This signifies a shift from the Australian Tax Office having final authority. It clarifies that the ACNC’s primary role is to regulate non-profit organisations, not just charities, which differs from New Zealand’s approach.

Churches and universities must now demonstrate their charitable purpose to the ACNC Commissioner rather than being presumed charitable¹³ (Australian Christian Churches 2012; Beard 2018). To qualify for the reduced financial reporting regime of Act s205(35), churches must prove that they meet the basic religious charity (BRC) criteria outlined in the Act (Saj 2022).

ACNC has independent powers for investigation and enforcement, including undertakings, injunctions, penalties, and suspension, to ensure compliance (Mills Oakley Lawyers 2012; Pascoe 2017). This step improves accountability and transparency in the charity sector; for example, late financial statement submissions will incur automatic penalties.¹⁴ However, ACNC does not provide details about any investigations it carries out.

¹² The Charities Act 2013 (Cth) (Australia) and the Charities Consequential Amendments and Transitional Provisions Act 2013 (Cth) (Australia) were passed and came into effect on the 1st January 2014.

¹³ The Charities Act 2013 (Cth) (Australia) has ‘disqualifying activities including election campaigning, certain advocacy activities and such like.

¹⁴ In comparison to New Zealand, where more than half the registered charities either fail to file their financial statements or are late in filing their financial statements; this is a huge improvement.

In its early stages, the ACNC aimed to reduce reporting burdens while improving governance and preventing fraud. Like Charities Services, it provides educational guidance for registration and shares best practices on its website. The ACNC Commissioner ensures that charities are accountable to the public, including donors and volunteers¹⁵ and that their information needs are met (this is discussed later) (Johns 2019). Australia has more than 58,000 registered charities, which is expected to grow yearly.

ACNC splits a charity's assets into two distinct areas – charity reserves (described as a rainy-day fund or a financial cushion by ACNC) and other general assets (like land, tangible assets, and restricted funds). Registering with the ACNC places a statutory asset lock on a charity's assets. If the charity ceases to operate, those assets must be disposed of in line with its charitable purpose, as stated in the dissolution clause of its deed. The statutory asset lock applies even if not stated in the charity's deed. However, critics of the ACNC legislation point to uncertainties about private individuals benefiting from charity assets despite the asset lock (Langford 2022). The ACNC has limited authority to enforce actions against individuals, so the police handle fraud cases. Like New Zealand, the ACNC has no authority over deregistered charities.

At its inception, ACNC received much criticism because the charity regulator was established without harmonising state and territory legislation (Artiach et al. 2016). In September 2013, during Australia's election, the opposing federal party promised to abolish the ACNC, citing its unnecessary compliance burden on the sector (Artiach et al. 2016; Hutchens and Ireland 2014). However, the Senate Economics Legislation Committee investigated ACNC and found strong support for it, allowing its operations to continue (Artiach et al. 2016).

4.1 Financial Statements

Australian charities and not-for-profits must follow Australian Accounting Standards and GAAP. Small charities can provide abbreviated financial statements, while medium and large charities must produce reviewed or audited full financial statements (Koh 2021). A charity's size is determined by its annual revenues (unlike in New Zealand, which uses expenditures).

- Small charities are those with annual revenue under \$500,000.
- Medium charities are those with annual revenue of \$500,000 or more but under \$3 million.
- Large charities are those with annual revenue of \$3 million or more.

15 Australian Charities and Not-for-Profit Commission Act s15-10(b).

In Australia, large and medium charities in a group must prepare consolidated accounts. The Commissioner permits joint reports to ease financial reporting, allowing small charities to submit a single Annual Information Sheet (discussed below), while medium to large charities can submit one Annual Information Sheet alongside one set of financial statements. Affiliated charities can use collective reporting, with one annual information sheet summarising the group's purposes while each entity submits its financial statements (Australian Charities and Not-for-Profit Commission 2023a).

Regardless, all charities, including any for-profit subsidiaries, must prepare annual financial statements and provide them upon request. To keep their tax-exempt status, profits from these subsidiaries must be used to support the charity's goals.

All Australian charities must produce an Annual Information Sheet¹⁶ in addition to financial reports. While this document is not an annual report, it resembles the American charity Form 990, which discloses financial and non-financial information about tax-exempt organisations. Like Form 990, each charity's annual information sheet is published on the Charity Register, serving as a vital resource for the public, researchers, and government agencies to learn about charities (Australian Charities and Not-for-profits Commission 2023b).

The annual information sheet replaces the annual report for many charities, with only larger charities typically producing one. Because annual reports are not regulated, charities can present information more flexibly (Johansson et al. 2022).

5 Canada

Canada has a long history of charity regulation, and much of it links to Canada's *Income Tax Act* (Income Tax Act R.S.C 1985) (before this, it was the *Income War Tax Act*). Moreover, much of the Canadian charity literature reflects the close link between Canadian charities and its taxation legislation (Watson 1985). The reason for this is that many Canadians have long believed that offering tax exemptions for charitable donations is an inappropriate use of tax funds (Hayhoe and Fitzpatrick 2020). Thus, Canadian charities are tightly regulated by their revenue agency.

It is from this perspective that Canada's government makes a clear legal distinction between a charity and a non-profit organisation (GBA LLP Chartered Professional Accountants 2023). Canada's Income Tax Act s149(1)(l) defines non-profit organisations; they do not need to register with the revenue agency. On the other hand, charities must register (Income Tax Act (section 248(1)), but the interpretation

¹⁶ The annual information sheet is submitted with a charity's financial statements – using the standard financial year as the reporting period.

of the ‘charitable purpose’ is left solely to the revenue agency. Consequently, an organisation cannot be classified as both a charity and a non-profit according to Canadian law.

Regardless, Canadian non-profit organisations can still receive tax exemptions on income related to their objectives but cannot issue tax-deductible receipts for donations (Hayhoe and Fitzpatrick 2020). As a result, non-profits must rely on other sources of revenue, such as membership fees and fundraising events, to operate. In 2011, the Canada Not-for-Profit Corporations Regulations were introduced, limiting the freedoms that Canadian non-profits previously enjoyed (Dentons Law Firm 2013). However, many in the sector found the legislation too prescriptive, failing to meet the sector’s needs and expectations (Canadian Bar Association 2019).

In 2021, a review of the Not-for-Profit Corporations Regulations led to significant changes aimed at improving the efficiency and accountability of non-profit organisations (Ministry of Justice 2023). The main updates involve hiring a non-accountant to perform an audit or review and adjusting the revenue threshold and reporting period to comply with these changes.

Since the early 1970s, the Canadian Parliament has proposed seven bills to improve the government’s interpretations of charitable purposes, but federal regulations have remained essentially unchanged since 1917 (Blaikie 2012). The Charities Directorate, part of the Canada Revenue Agency, oversees the charitable sector and is not independent of the government (Canada Revenue Agency 2011). The Charities Directorate, after registration (through the Tax Act), regulates three other main elements of charities:

- Whether a charity is eligible to be tax-exempt
- The deductibility of charitable donations
- Regime of tax supervision and regulation

Provincial and territorial governments regulate all other charity activities, and much of this is related to property law (Hayhoe and Fitzpatrick 2020). A Canadian charity must adhere to both state and federal regulations, even though some states have recently updated their laws to align with new federal thresholds. Some examples include charities that distribute donated food (a law found in all States in various versions) and charities that are involved in gaming (like bingo or raffles, for example) (Imagine Canada 2023).

The Canada Revenue Agency’s oversight includes.

- Processing applications for registration.
- Offering technical advice on operating a charity.
- Handling audit and compliance activities; and
- Providing general information to the public.

The Charities Directorate can impose penalties to ensure compliance and serve as a deterrent for activities such as money laundering and tax abuse. If necessary, the charity's registration can be revoked, and the individuals responsible for governing the charity may be held personally liable for monetary penalties. These powers are not unlike the powers of any revenue [tax collection] agency (Hayhoe and Fitzpatrick 2020). Nonetheless, the classification of charities under Canada's Income Tax Act is significant, as the goal of any tax legislation is to maximise net revenue within the confines of the law.

5.1 Financial Statements and Annual Return

Canadian charities must file an annual return, known as the T3010 annual information return, whether active or not. This form is usually submitted with the charity's financial statements. However, stakeholders often criticise the T3010 for providing minimal information compared to Australia's annual information sheet or US 990 form (Blumberg 2023).

The Canadian Accounting Standards Board has established accounting standards to guarantee that all charities adhere to Canadian GAAP. Large charities (those with an income exceeding \$250 K) are encouraged to have audited accounts; otherwise, the charity treasurer has to sign off on them personally (Canada Revenue Agency 2023a). Smaller charities can submit simpler accounts but must still include essential information about their revenue and expenses.

The disbursement quota in section 149.1(1) of the Income Tax Act is unique to Canada and requires charities to allocate most of their resources to charitable programs instead of administrative costs. The charity must meet the annual spending requirement to retain its registered charity status. In June 2023, new rules allowed Canadian charities to grant funds to non-qualified donees (form T1441). The form (attached to T3010) improves transparency for charities granting funds (cash and non-cash) to recipients, even outside Canada (Oh and Westerhof 2023).

Canadian charities must also fill out a specified form (T1236 (13)) for all gifts that they have made to qualified donees or other organisations (regardless of whether they are a (un)registered charity or not). If a charity donates over 50 % of its income to another charity, it must request associated status with that charity to keep its charity status. This limits cross-sector funding between charities (Canada Revenue Agency 2023b).

Charities in Canada have strict restrictions on business activities. Consequently, a charity with a for-profit business is unlikely to keep its registered status. It must prove that any related business activities are directly linked to its charitable goals and are subordinate to them; otherwise, it must be 'substantially all' carried out by volunteers (Canada Revenue Agency 2023c). Thus, Canada's charities with

commercial or investment arms face significant obstacles. If a charity does succeed in having a related commercial arm, it must consolidate its accounts (Canada Revenue Agency 2013, 2023a).

6 United Kingdom – Charity Commission for England and Wales

The United Kingdom has a long history of regulating charities, dating back to the Elizabethan statute of 1601. The United Kingdom has various legal systems, but the focus here is on England and Wales, where the Charity Commission operates under English law, while other regions, like Northern Ireland, follow different laws. England and Wales have a long history of charity law, with some of the world's oldest charities established over 1,000 years ago.¹⁷ England and Wales host over 168,000 charities, making their charity sector one of the largest.

For over 30 years, England and Wales have led common law reform to enhance charity accountability, beginning with a 1976 review by the National Council of Service on the impact of charity law on voluntary organisations.

The Statute of Charitable Uses Act of 1601 established the Charity Commissioners for England and Wales to ensure charitable gifts were used as intended (Elson 2010). Although the statute has been long repealed, the Preamble, which laid down the legal principles of charitable purposes, is still the guiding doctrine for many common law countries (Chevalier-Watts 2017; Oosterhoff 1977).

The Charity Commission was established by the Mortmain and Charitable Uses Act of 1853 and remained mostly unchanged until the 1980s despite undergoing various inquiries and reforms. It is an independent body and operates under the Charities Act (2011) s13.¹⁸

The Charity Commission for England and Wales has broad powers to regulate the activities of registered charities. These include:

- Increase public trust and confidence in charities.
- Promote awareness and understanding of the operation of the public benefit requirement (the requirement that charitable purposes must be for the public benefit)
- Promote compliance by charity trustees with their legal obligations in exercising control and management of their charities.
- Promote the effective use of charitable resources.

¹⁷ An example of this is King's School Canterbury which was established in Ad 597.

¹⁸ The earlier Charities Act 2006 (Australia) s6 was repealed.

- Enhance the accountability of charities to donors, beneficiaries, and the general public.

The Charity Commission does not have prosecutorial powers like the ACNC but closely collaborates with other government agencies to meet its goals and avoid service duplication. Established by the Charities Act 2006 (UK), the Charity Tribunal offers charities an affordable and accessible way to appeal Charity Commission decisions. The Commission also promotes best practices and provides educational resources on its website. This charity regulator has a broader scope than the other three discussed in this article, mainly because it oversees a larger charity sector.

Some comment should be made about Brexit (2016–2017), where funding to charities fell significantly as they were unable to access the European Structural Fund (which provided more than €4.35 billion between 2014 and 2020 (Geary 2021; Holland 2021)). The lost revenue stream has been replaced by the UK Shared Prosperity Fund, a three-year initiative expected to provide at least £2.6 billion for local investments and charitable organisations (Lepper 2021). The current estimated total income of the charity sector is more than £89 billion (Charity Commission for England and Wales 2023a).

In 2012, the Charity Commission introduced the “Risk Framework”, now known as the “Regulatory and Risk Framework”. This framework enables the Commission to assess if it needs to intervene in a charity’s activities due to potential risks to beneficiaries or assets (Charity Commission for England and Wales 2023b). One effective way to ensure that a charity adheres to statutory requirements is to appoint an administrator to its governance body. This intervention is usually essential for medium to large charities with significant assets at risk. However, the preferred approach is to implement best practices to maintain compliance.

Charities with incomes under £5,000 that are not exempt¹⁹ or excepted²⁰ do not need to register with the Charity Commission. However, unregistered charities are compelled to comply with the charity law and could become subject to an investigation by the Charity Commission (Holland 2021). The Charity Commission publishes an annual report highlighting key lessons and warnings for charity trustees, who are personally accountable for their decisions. Unregistered charities can still obtain tax relief.

In England and Wales, the Charitable Incorporated Organisation (CIO) established by the Charities Act 2011 (UK) is exclusive to charitable organisations in England and Wales. This type of organisation is automatically registered, even with an income under £5,000. Designed for charities, this legal structure offers a legal

¹⁹ These are universities, some museums and co-operative societies for example.

²⁰ These are a designated group of charities like churches, scout and guid groups for example.

personality like a corporation and limited liability for members. The Scottish Charity Regulator adopted it in 2011.

In England and Wales, charity assets are locked upon registration. If a charity ceases to operate, its assets must be disposed of in accordance with its objectives. This rule applies to all charities, registered or unregistered.

6.1 Financial Statements

In 1984, the Accounting Standards Committee (UK) produced a discussion paper that led to the 1988 creation of Statement of Recommended Practice (SORPs). SORPs offer guidelines for financial reporting, auditing, and actuarial practices tailored to various sectors. For charities, they set the standards for financial reporting and annual report preparation applicable to all charities regardless of size or registration status. By 2019, the SORPs charity financial reporting framework had been extended to all charity regulators across the United Kingdom.

In the case of England and Wales, the current SORP categorises charities into two groups: those with an income over £500,000 and those with less. This makes the financial reporting process simpler. All charities are expected to produce financial statements, but a charity that earns £500,000 or more is expected to provide greater detail in its accounts. If a charity is unregistered (income less than £5,000), they do not have to file financial statements. However, they are still required to keep them and be able to produce them if demanded by the Charity Commission.

Legally, all charities with over £1 million in income must have their financial statements audited. Regardless, if any charity has a gross income of £25,000 or more, the requirement is a lower-level examination of their financial statements. As part of filing the financial statements (together with the annual return), the charity must include its main banking account details (these are not published). If a charity is part of a group or has a for-profit subsidiary, the parent charity must consolidate its accounts. The for-profit arms must further the charity's objectives to remain tax-exempt.

In England and Wales, charity trading is divided into two categories: primary purpose trading, which is non-taxable and usually done by volunteers, and non-charitable trading, which is taxed as commercial business. Charity business activities may incur consumption tax, specifically value-added tax (VAT) in the UK. For-profit branches will be taxed, while only the gift aid portion transferred to the charity for its charitable purposes is exempt from tax.

The Trustees' Annual Report, unique to the Charity Commission, serves as the charity's narrative report. It outlines activities (whether objectives were met), highlights achievements (the charity's impact), and explains financial reports (how funds were used). The document provides key information about the charity,

including its governance, trustees, and management. Many charities in England and Wales use the Trustee's Annual Report instead of a traditional annual report.

7 Summary

This study shows that despite sharing a common law framework, New Zealand, Australia, Canada, and England and Wales regulate charities differently but also adopt certain practices from one another (see Table 1).

Every country in this study has a charity state regulator, but their independence from the government varies. In Canada and New Zealand, the regulator operates as a division of a government agency. In Canada, the Charity Directorate operates under the Canada Revenue Agency, linking charity policies to the Income Tax Act and resulting in limited accountability. The revenue agency is more concerned with monitoring charities to ensure the appropriate use of tax exemptions. Additionally, there has been little progress in establishing accountability for non-financial information in Canada. In New Zealand, the charity regulator, Charities Services is part of the Department of Internal Affairs. While Charities Services monitors charities and can act, the primary consequence of enforcement is often deregistration and not much more.

Australia and England and Wales have independent bodies that regulate charities. The ACNC has strong monitoring and enforcement powers in Australia, but its legislation also covers all not-for-profit organisations, extending its oversight beyond charities. The Charity Commission, on the other hand, is a very solid and historically strong body; moreover, the sheer number of charities registered in England and Wales dictates the importance and scope of the work carried out by the regulator. Australia uses a confrontational approach to monitor not-for-profits, while the Charity Commission takes a collaborative and educational stance. Consequently, the Charity Commission effectively models accountability, whereas Australia is still developing policies to help charities comply.

All countries require charity registration, but the rules differ. Australia and Canada mandate registration for tax exemption, while New Zealand and England and Wales allow tax-exempt status for unregistered charities. The Charity Commission does not enforce registration, as many unregistered charities are small or regulated by other agencies. Registering as a charity seems optional in New Zealand, and most do not.

All countries require charities to provide financial statements, and regulators are aligning their expectations. The Charity Commission's SORPs (Statements of Recommended Practice) benefit charities at all levels and are tailored to specific

Table 1: Summary of international comparison of charity regulators.

Elements of Charity Regulators	New Zealand	Australia	Canada	England & Wales
Status of the charity regulator	Part of government office – attached to DIA ^a	Independent regulator – with support functions of the ATO ^b	Part of government office – attached to CRA ^c	Standalone commission
Charity must register	X	✓	✓	X
Use of Charity's formal name on the register	✓	✓	✓	✓
Use of Charity's informal name on the register	X	X	X	X
Statutory reports available via the public online register	✓	✓	✓ – however, there are limitations on the information disclosed	✓
Deregistration	✓	✓	✓	✓
Enforcement penalties	✓	✓	✓	✓
Charity tax exemption benefits	✓	✓	✓	✓
Statutory lock on charity assets	X	✓	✓	✓

^aDepartment of Internal Affairs. ^bAustralian Tax Office. ^cCanada Revenue Agency.

operations. Moreover, accurate financial statements are crucial for effective communication, and this tool can be very helpful in achieving that.

Australia, New Zealand, and Canada have adopted GAAP approaches for charity accounting, and while this is an improvement on past expectations, this approach is still not explicitly designed for charities. This means that charities in these countries are forced to use accounting frameworks that do not necessarily enable them to communicate their operations as effectively as their England and Wales counterparts.

Consolidation, or group accounts, is where charity regulators align their expectations. However, the complexity of this process differs by jurisdiction. For example, New Zealand uses a tax-based definition of control for charities, and as a result, consolidating the financial accounts as if they were one entity may obscure the relationship between a charity and its for-profit arms. This ultimately limits accountability.

The handling of business activities in the four countries is similar, but outcomes vary. In Canada, charities face strict limitations on their business activities due to tax laws. In Canada, non-compliance will lead to the loss of a charity's registration status. Australia has a similar approach, but its "related business" application is less strict than Canada's. In England and Wales, only the gift aid from for-profit subsidiaries to parent charities is tax-exempt; all other income is taxed. In contrast, New Zealand allows all profits from subsidiaries to go untaxed if they support the charity's objectives, which is surprising given the considerable wealth accumulated by its charities.

Asset locks vary across the four countries. A charity's assets are automatically locked in England, Wales, and Australia, even if unregistered. If a charity stops operating, its assets must be disposed of according to its charitable objectives. In Canada, charities have a limited asset lock, while New Zealand manages charities' assets ad hoc, lacking a clear policy for asset disposal when charities cease operations.

The article indicates that the Charity Commission for England and Wales leads in charity accountability. Charities in England and Wales have stood the test of time and faced much scrutiny. More importantly, charity law has evolved to meet changing societal needs compassionately and efficiently. Australia, through the ACNC, is making strides toward similar standards. Charities Services is still developing policies for New Zealand charities. While it is making progress in holding registered charities accountable, the high number of unregistered charities undermines its efforts. Canada's Charities Directorate has adopted a stringent taxation policy approach to charities. Ultimately, this restricts the accountability and activities of charities primarily due to fiscal considerations.

This article explores the differences in institutional approaches to charity accountability in four common law countries. Further research could examine charity accountability from the perspectives of legal forms and information disclosures in common law countries, particularly New Zealand, Australia, and Canada. This is another area where there has been little research.

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