



22 November 2022

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Submission to the Social Services and Community Select Committee on the Charities Amendment Bill 169-1

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wāhine o Aotearoa (NCWNZ) is an umbrella group representing around 60 affiliated organisations and 300 individual members. Collectively our reach is over 200,000 with many of our membership organisations representing all genders. NCWNZ has 13 branches across the country.
2. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
3. This submission has been prepared by the NCWNZ Influence and Decision Making Action Hub and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Summary

4. NCWNZ was de-registered as a charity in 2012 and went through an arduous, expensive, time-consuming, and debilitating process to successfully appeal our de-registration. The lengthy and expensive appeals process drained the energies of our voluntary organisation, cost our organisation dearly and impacted on the ability of our organisation to continue its important core work.
5. We do not believe any charitable organisation should have to go through the lengthy and debilitating process NCWNZ went through to appeal its de-registration as a charity. For this reason, we strongly favour a simplified, accessible appeals system, which is easy to navigate, less time consuming and complex than the existing system and which provides equitable access for all charities.

6. NCWNZ believes that a charity at risk of de-registration should be able to appeal any decision made by the Charities Registration Board and should be able to present additional oral and written evidence in support of its appeal. We would point out that given the cost and stress of lodging an appeal, there are unlikely to be ‘frivolous’ appeals.
7. We believe it is essential that there is a simpler, less punitive, financial reporting system for smaller charities, especially smaller charities that are heavily reliant on volunteers to carry out their work. A simpler financial reporting system would reduce the compliance burden on charitable organisations and enable them to focus on their charitable activities.
8. NCWNZ considers the present regulatory focus of the Charity Services is too narrow and we would like to see the Charities Board established as a completely independent entity which would be completely independent of the government of the day, and which would be scrupulously fair and transparent in all its operations. An independent entity should have specialist policy knowledge of the community and voluntary sector and should be able to actively engage and champion the interests of charities.
9. We believe there should be greater freedom for charities to advocate for policy and law changes in the fields in which they work.
10. While we support the spirit of most of the proposed changes, we note that it was difficult to assess the impacts without access to more detail about their implementation.

Clause by clause analysis

Clauses 23 and 26

11. The proposed new sections 58A, 58N(2) and 55A of the Charities Act 2005 would limit charities’ ability to appeal decisions of Charities Services to only 4 decisions.
12. NCWNZ can see no good reason for limiting the ability of charities to appeal decisions of the Charities Services. In our view all decisions that are made under the Act should be subject to appeal.

Clause 26 New section 58A Right of appeal to Authority against decisions of Board and certain decisions of chief executive

13. A proposed new section 58E(1)(a) would limit a charity’s ability to appeal to the grounds stated in its notice of appeal. The proposed new section 58A would also replace charities’ current ability to appeal to the High Court with an ability to appeal to the Taxation Review Authority (TRA) only.
14. NCWNZ does not believe that charities’ ability to appeal should be limited to the grounds stated in its notice of appeal. Charities should be able to access a full oral hearing of evidence to allow them to establish important factual questions, as is the case for all other persons appealing to the TRA.

15. We believe that charities should be given a choice as to whether to appeal to the Taxation Review Authority or to the High Court. We note that time frames for the Taxation Authority are likely to be quicker and less financially onerous than those involved in an appeal to the High Court.

Clause 4 Section 4 amended (Interpretation)

16. Clause 4 of the Bill proposes to extend the definition of “officer” of a registered charity to any person who is “able to exercise significant influence over the management or administration of the entity”. We believe the definition of “officer” should be limited to those governing the charity.

17. The Charities Act should clearly state the primary fiduciary duty of those governing charities that already exists, namely, to act in good faith to further the charity’s stated charitable purposes in accordance with its rules.

7 Section 13 amended (Essential requirements)

18. The intention of proposed new section 13(1)(e) appears to be to override sections 96(2)(a) and 151(2)(a) for registered charities to allow people aged 16 or 17 to be officers of a charity provided a charity has at least one officer who is aged 18 or over.

19. There were differing views in NCWNZ as to whether 16- and 17-year-olds should be able to hold officer roles in charities.

20. Most members believe that age should not be a barrier to people carrying out Officer roles in a Charity, especially for charities focusing on young people as it brings lived experience and perspectives. The voices of young people are under-represented and often marginalised, so having early engagement in the non-profit and philanthropic sector would be beneficial to an organisation and would improve representation and diversity, which is critical to building a base of future governance in the sector. We consider that the contribution of young people, especially in areas such as IT and communications, would be valuable for most charitable organisations.

21. It was also noted that becoming an officer of a charitable organisation involves being nominated and voted on by members of a Charitable committee or board, who would have the best interests of a charity at heart.

22. We note also that an officer of a charitable organisation, regardless of their age, would be required to understand the rules for charities and ensure funds/assets are used exclusively for charitable purposes. This should be a key requirement, rather than age.

23. Some concern was expressed that persons under the age of 18 may not be able to sign all documents, or be able to get a bank loan, so there could be a liability if an officer was younger than 18 years. While the spirit of changes proposed were positive, it was difficult to assess the impacts without access to more detail about implementation.

First principles review

24. A first principles review of the Charities Act is needed. We believe NCWNZ would not have been de-registered as a charity if the definition of charitable purpose had been widened and that charities were able to engage in advocacy without fear of losing their registered charitable status.

Conclusions

25. NCWNZ supports a simplified, accessible appeals procedure, simplified financial reporting systems and that a charity at risk of de-registration should be able to appeal any decision made by the Charities Appeals Board.



Suzanne Manning
NCWNZ Board

Sue Kedgley
NCWNZ Influence and Decision- Making Action Hub