Community Networks Aotearoa

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Submission on the Charities Amendment Bill 2022

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About Community Networks Aotearoa

We are the umbrella organisation for local regional and national community networks. The community sector is an essential part of a healthy thriving society. Our goal is to empower and strengthen the community sector by supporting community networks across Aotearoa.

Our membership includes sixty-one not-for-profit and voluntary social service organisations all over the country, who in turn support their own local networks of community organisations.

We support our members by providing:

- Information on key events, reforms, and policy affecting the community sector
- Personalised organisational advice and support
- A platform for a collective voice on matters affecting the community sector
- Opportunities to connect with other community networks across Aotearoa

Community Networks Aotearoa is a National Peak Body representing 60 major networks of Non-profit organisations both national and regional across Aotearoa. Part of our role is to work with government when required in an advisory capacity. We would be happy to work with the Select Committee with a genuine interest in having kōrero together in a positive manner to ensure that the final result is one that reflects the best outcomes for the Community and Voluntary agencies and Government.

These things we view as positive and helpful:

- We support any proposals that bring back an original role of Charities Services in education and information sharing.
- We support any proposals that enable easy compliance by charities. At the moment compliance issues are so large many organisations are unable to focus on their missions.
- We support the consideration of the costs to charities when they need to legally challenge decisions. Deregistration has implications that are very serious for charities.
- We tautoko our colleagues from Hui E! who note the issue of duplication and conflicting regulatory requirements on charities. In particular we wish to repeat one phrase "The focus should be on outcomes, and if the outcome is met by one piece of legislation, then there is no need to overly regulate".

Summary of key points

- Against widespread concern and requests from the Sector, the Government has chosen not to have a 1st Principles review. This is very disappointing.
- We are concerned about the Appeals process which has many issues we will further discuss.
- The expansion of definition of Officers goes against normal governance/management practice especially in relation to the further amendment 36c which gives the Charities Board the ability to ban an officer.
- The section requesting an annual review of procedures is unreasonable.
- There is no post implementation review in this amendment.
- There is no change to the advocacy requirements.
- There is nothing regarding a Māori Advisory committee being formed to show true collaboration between Charities Services and Tangata Whenua.
- We wish to discuss the possibility of an independent Board from DIA. The closeness of the Charities Registration Board to staff at DIA has led to concerns about decisions being influenced by Politics and Government department power.

- We are concerned how this amendment is overlaid with even more restrictive regulations on this already highly restricted sector.
- The review by DIA. This has called into question the integrity of conflicts of interest. We believe that the Department should not be reviewing itself when dealing with an external sector that is of such importance to the wellbeing of New Zealanders.
- Charities Services' use of the term "regulator"

First Principles Review:

We wish to emphasise that there needs to be a first principles review of the Act. This is best done by an independent body to ensure comprehensiveness and integrity of the process and to ensure there are no conflicts of interest. We have been promised this for some years, and we believe that the majority of the Charitable Sector wish for this review. It is the cause of a lot of frustration in the Sector, that again we are being denied this review.

The tone and requirements brought into this review by DIA:

This review has been described in multiple ways by members of the Community and voluntary Sector. We have not heard a great deal of positive commentary although some clauses are welcomed, and we are grateful for them. However harsher words are being used about what this review seems to want to achieve.

We would really appreciate a more positive view of the amazing community and voluntary sector. Where the first point of view is that all this extra regulation is not needed. But that this Sector is recognised and supported into a trusting and participatory environment with Government.

This amendment to the Bill does not reflect the work that MSD (Ministry for Social Development) and MBIE (Ministry of Business, Innovation and Employment)are currently doing regarding relational agreements over transactional agreements. We think that restrictive legislation like the Anti-Money Laundering and Countering the financing of terrorism Bill and continuing reflection of the XRB International Finance regulations may have influenced the writers of these amendments to look towards regulatory over-reach and we hope that this will be muted by the considerations of the Select Committee to enable better support and encouragement from the Government for the work that we do.

Finally, Charities services is not a regulator, it is a registrar. Nowhere in the Act is Charities Services described as a regulator, and there is no mention of this either in the current amendment. This is a role that Charities Services has taken upon themselves and is affecting their rather distrustful view of the Charitable Sector.

The Appeals Process:

This is a complex discussion, as on one hand we see the merits of enabling Charities to go to the Taxation Review Authority (TRA) prior to possibly appealing that result with the Supreme Court. On the other hand, there is the issue that the Appeals Court hardly ever accepts a case that has already been to two courts. We feel that this change is giving a false sense of security to many Charities when the opportunity to take a case to the highest court in the land may be no longer open to them.

Also, there is the fact that the Charity is restricted in presenting new evidence and in properly challenging the factual findings made by Charities Services. In 2004 the Select Committee replaced the words “District Court” in the original Charities Bill with the words “High Court” but did not clarify the nature of the hearing on appeal.

District Court appeals are normally heard as full oral hearings of evidence (which allows either party to call witnesses who can be cross-examined, and the rules of evidence apply). However, because the Charities Act is silent on the nature of the hearing on appeal, the standard High Court rules apply.

These rules do not allow evidence to be called or witnesses to be cross- examined. Instead, the High Court makes its decision based on the ‘record of proceedings’. These rules are strict, but they are premised on an assumption that there has already been a full oral hearing of evidence in the tribunal appealed from. However, neither Charities Services nor the Charities Board conduct an oral hearing of evidence meaning that charities’ ability to access an oral hearing of evidence has effectively been inadvertently removed altogether.

This means that Charities Services’ internet searches from which Charities Registration Board may draw adverse inferences cannot be properly challenged. This biases the entire appeals process for charities in favour of the original decision maker i.e. Charities Services.

Allowing an appeal to the TRA should fix this problem, but the problem is the Bill makes changes to the normal appeals process: the intention appears to be to devolve to an internal objection process that will be conducted and controlled by Charities Services and/or the Board.

However, neither the Board nor Charities Services are judicial, and they are not subject to the rules of evidence (and they are not independent of the original decision-maker: despite Charities Services' repeated assertions that the Board is "independent", the reality is that the Board is not sufficiently distanced from Charities Services to be able to exercise the independent check on decision-making that was intended, meaning that decisions regarding the nature and scope of our charitable sector are effectively being made by a business unit of a government department).

We have heard that Charities Services is concerned about many Charities being litigious. This is not borne out by evidence over the years since the Charities Commission was first set up. In addition, a fair appeals process is likely to reduce costs due to better structural accountability and therefore trust.

Definition of Officers:

This new definition is marred by problems.

To open the definition to include "a person who is able to exercise significant influence over the management or administration of a charitable entity" (P7 explanatory note Clause 4 amendment Section 4) means that many people both within an organisation and outside of an organisation can be defined as an officer.

For example: Staff could be defined as an officer, or taking it to extremes, your accountant, funder or lawyer can be defined as officers within this definition. This also affects the standard understanding of governance/management. Imagine if staff in parliament are deemed to be MPs because they have significant influence over the management of the MP. This situation is like that.

What are the unintended consequences of this suggested legislation?

- Further in the Bill the Charities Board has the right to ban an officer under proposed new section 36C. If a staff member was deemed to be an officer, Charities Services can essentially sack a staff member, taking away the employment rights and responsibilities of the organisation's governing body.

  – What does this mean for the legal independence of Charities and their distance from Government?

  – What does this mean in relation to employment law?
  – Is this action even legal?

- These kind of regulatory changes are essentially changing the very structure and independence of the Community Sector. We do not agree that Charities Services has this mandate.
- We believe that the answer to this, if this definition remains, is a clear ruling on clarity between who governs a Charity and who is an officer.

Annual Review of Procedures:

This is unfair and will create a burden on Charities. It is already difficult enough to meet the requirements of many legislative changes being put on Charities from multiple restrictive Acts without boards being required to annually review their governance procedures.

We admit that there are Charities whose constitutions are out of date but legislating to enforce reviews annually is overkill. This is where the work of Charities Services in education and cooperative work with organisations can be encouraged and increased. Many organisations in the Sector (including CNA (Community Networks Aotearoa)) are also working with our peers and collaborators to encourage better understanding and use of their constitutions but legislating that this is required annually oversteps a line of organisational responsibility and is unnecessary and over-regulatory.

With the incoming changes to the Incorporated Societies Act, at least 25% of Charities will have to review their rules anyway. We would also like to suggest that the frequency of this requirement will end up with many smaller organisations simply ticking the box.

Further concerns:

- This is not a fairer Act; this is a restrictive Act and obviously so.
- There is no mention of a post implementation review. Surely with restrictive new expectations this is necessary to check the validity of these legal requirements.
- There is no review of the issue of advocacy. This is a big issue within the Charity sector, and we were hopeful that the opportunity to review this restriction would occur.
- We are surprised considering the importance and focus on Tangata Whenua that there is no mention of a Māori Advisory Committee to work with the Charities Board.

- We feel it is particularly important that the Charities Board has independence from DIA and the Minister. This reaches to the issue of transparency and the impression of undue influence that a Ministry could have over decisions from the Charities Board.

"A Collective Voice Supporting Local Communities"

Community Networks Aotearoa — Te Hapori Tuhononga o Aotearoa