

S11.15	Crown Entities Reform Bill (332)
Oral submission	Submission to Government Administration Committee
Date	15 February 2012

Committee Members

Chair: Hon Ruth Dyson, Labour; **Chris Auchinvole**, National; **Kanwaljit Singh Bakshi**, National; **Damien O'Connor**, Labour; **Eric Roy**, National; **Holly Walker**, Green.

Good morning. My name is Judy Whitcombe; I am a member of the National Council of Women Parliamentary Watch Committee and my colleague is Jean Fuller, a member of that committee.

Our written submission was prepared by the convener of the Public Issues Standing Committee of the National Council of Women and the Parliamentary Watch Committee.

Our comments today will address the three parts to the Bill with emphasis on Part 3.

Part 1 New Zealand Public Health and Disability Act 2000 **Health Promotion Agency (HPA)**

Clause 6 New headings and sections 57 to 59AA substituted

The establishment of an “arm’s length health promotion agency” to bring together ALAC and the Health Sponsorship Council is supported.

Our submission mentioned the policy development function. The new Clause 58 covers the Functions, duties and powers of the Health Promotion Agency and notes (section 58 (3) that the Health Promotion Agency must have regard to government policy that relates to those functions if so directed by the Minister. **There is no mention of the Health Promotion Agency having any responsibility for the development of policy.**

The funding of the Health Promotion Agency was also mentioned in the submission. Section 59 covers “Provisions relating to grants, sponsorship and other matters” and specifies where the HPA can “spend” money. Section 59AA mentions levies. But we were not able to work out exactly how the HPA will receive its operational funding.

Part 2 Mental Health Commission Act 1998

Clause 38 Amendments to Health and Disability Commissioner Act 1994

Acknowledge the incorrect reference in the second paragraph of the submission. This should read the Health and Disability **Commissioner** Act 1994.

The submission makes reference to the proposed section 14(1) amendment to the Health and Disability Commissioner Act 1994, where a new paragraph (ma) “to monitor mental health and addiction services and to advocate improvements to those services” does not appear to reflect the current functions of the Mental Health Commissioner – outlined in section 6 of the Mental Health Commission Act 1998, and reproduced in full in the submission.

Indeed, the new responsibility “to monitor mental health and addiction services and to advocate improvements to those services” is very high level and general in its coverage. We

are concerned that this more general responsibility will not provide the coverage of the current Mental Health Commission.

Part 3 Charities Act 2005

We acknowledge that the Charities Commission deregistered the National Council of Women in July 2010. The reason given in the determination being that NCW is not established and maintained exclusively for charitable purposes as required by section 13 (1)(b)(i) of the Charities Act 2005. The Commission's Determination takes the view that "political advocacy is a continuing activity and the main reason for the Society's existence"

It is NCW's commitment to advocacy which brings us here today.

However, since it was established in 2005 the Commission has gone from strength to strength. In its **2011 Annual Report (show)** the Commission processed 2,638 applications for registration, 23,779 Annual Returns and 7,735 notices of change. At present more than 25,700 charities are registered with the Commission. (Open Data 25,785 at 28 Feb 2011) The Open Data and Advanced Search facility is now available for access by the public. We also note that the Crown Funding was \$4.844 m.

We would reinforce the point made in our submission, that it is premature to move the Commission before the first principles review has been completed. In her speech to the 2010 AGM the then Minister for the Community and Voluntary Sector¹, Hon Tariana Turia, noted that the work would be scoped in 2012. It is to be hoped that such a review will examine the out-of-date criteria for registration.

While NCW itself has been deregistered, a number of its affiliated organisations are Not for Profit community based organisations many of which are registered with the Commission. Our concern about the proposed placement of the Commission within the Department of Internal Affairs is based on the ability of such a large and diverse Department to continue to maintain the high standards which the Commission has achieved.

The Department of Internal Affairs now has six branches and their 2011 Annual Report demonstrates the wide range of functions and diverse and fragmented responsibilities carried by the Chief Executive.

Strategy and Governance branch

Knowledge, Information, Research & Technology branch

Covers National Library, Archives, Government Chief Information Officer, Govt Technology Services, Govt ICT management, and Govt Information Services

Ministry of **Civil Defence** and Emergency Management

Policy, Regulatory and **Ethnic Affairs** branch

Service Delivery and Operations branch

Shared Services branch

Related Information

The Bill (CI 43/44) proposes that the Chief Executive of the Charities Commission will be the Chief Executive of the Department. The new chief executive (currently there is only an Acting CE of the Department²) will have a huge range of responsibilities and a new appointee will be unlikely to make the settling in of the functions of the Charities Commission a high priority.

¹ www.beehive.govt.nz accessed 10 February 2012

² www.ssc.govt.nz (accessed 13 February 2012)

The First Principles Review of the Charities Act, as mentioned by the Minister of the Community and Voluntary Sector in 2010, should proceed. However, we note that the purpose of the Charities Act 2005 as set out in section 3 (see below)

Charities Act 2005 S. 3 Purpose

The purpose of this Act is to—

- (a) establish the Commission as a Crown entity for the purposes of section 7 of the Crown Entities Act 2004;
- (b) state the Commission's functions and powers;
- (c) require the Commission—
 - (i) to have regard to certain matters; and
 - (ii) to comply with certain other obligations;
- (d) provide for the registration of societies, institutions, and trustees of trusts as charitable entities;
- (e) require charitable entities and certain other persons to comply with certain obligations.

Is being replaced by more detailed specifications and this can only be an improvement.

From Crown Entities Reform Bill (page 20)

Section 3 is repealed and the following section substituted:

“3 Purpose

The purpose of this Act is—

- “(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.”

However, the troublesome definition of a Charity still remains at the heart of the legislation. The continued use of the term “charitable entities” should be reviewed. Section 5 of the Charities Act defines the meaning of “charitable purpose”. While it includes “relief of poverty, the advancement of education, or any other matter beneficial to the community” s5(1) it is specific that the advocacy function is non-charitable and for trusts and societies to be included in the register the advocacy function must be ancillary (s5(3)) The guide for such decisions should be **public benefit**³.

Summing Up

In conclusion we support the establishment of the Health Promotion Agency (subject to the provision of adequate funding).

However we do not support the proposals outlined in Parts 2 and 3 of the Bill.

- the transfer of the functions of the Mental Health Commission to the Health and Disability Commissioner; and
- disestablishing the Charities Commission and transferring its functions to the Department of Internal Affairs.

We also note that these proposals involve reduced overheads – staff cuts and reductions in board membership, and we are concerned that expense cutting should not be to the detriment of the quality of the services offered.

³ ANGOA Position Paper (accessed 14 February 2012)

Questions for Crown Entities Bill oral Submission 15/2/12

Present: Chair: Hon Ruth Dyson, Labour; Chris Auchinvole, National; Kanwaljit Singh Bakshi, National; Hon Damien O’Conner, Labour; Eric Roy, National; Holly Walker, Green.

Q 1. Mr Auchinvole (National) spoke at length about the benefits of mergers. He cited the collegiality affect, common objectives and the benefit of concentrating together similar organisations. He then expressed surprise and amusement that NCWNZ should be speaking in favour of moving the Health Promotion Agency to the Public Health and Disability Act, but wished to retain the independence of the Mental Health Commission and, in particular, our lack of support for the move of the Charities Commission to the Department of Internal Affairs. This latter position was the subject of some amusement among the rest of the Select Committee who felt that in view of our deregistration NCWNZ would be glad to see the Charities Commission folded into the DIA.

A 1. No particular question was asked but we took the opportunity to say that the Committee’s attitude served to confirm our concern that if the merger took place before the Charities Commission’s Review, the question of the definition of a charity might be either postponed or even ignored. Ruth Dyson assured us that we should not take the Select Committee’s light hearted remarks too seriously, but our comments served their purpose because she subsequently instructed officials to look into the matter of the timing of the Charities Commission Review and report back to the Select Committee.

Q 2. Ms Holly Walker (Green) noted our concern about the definition of a charity and the importance of having the Review take place in a timely fashion. She then went on to ask whether, since we supported the value of advocacy, we would also want to see that feature available to the Health Promotion Agency, as well as the ability to develop public policy which was signalled in our submission.

A 2. We agreed that this could be helpful for that agency.

Jean Fuller
15/2/12