



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Social Services Select Committee
on the Charities Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 41 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. Whenever possible, members are invited, through questions in the regular "Circular" to respond to current issues. This submission is based on material received from members in response to the following questions:

- Does the registration of charities warrant the establishment of a Special Commission? (five to seven members plus staff with the appointment of a CEO as optional)
- Is there too much duplication in the not-for-profit sector e.g. certain medical charities?

Several years ago CORSO was de-registered as a charity. Should there be a provision for a right of appeal if a charity becomes de-registered?

Members were encouraged to read the Bill on the government web site.

General Comments:

With many of our affiliates being church groups and other charitable organisations, NCWNZ has a very special interest in this Bill. The responses to the questions revealed an appreciation of a need for improving the "accountability and transparency of the charitable sector" as stated in the Charities Bill explanatory notes. But the great majority of responses were very cautious about the proposals of the Bill. Even the few in favour of the Commission's establishment are wary about the costs involved, especially if a CEO is appointed whose salary and expenses are to be drawn from registration fees. There are doubts too, as to the promised independence of a Charities Commission, along with the frequent query as to why a charity should not continue to register with the Department of Inland Revenue. Other suggestions are for a unit within the Department of Internal Affairs, or for increased authority and funding for the Registrar for Incorporated Societies.

Specific Comments:

**Part 1
Charities Commission**

Clause 3: Purpose

Respondents have expressed concern about the difficulty the Commission will have in being both independent and carrying out government policy. This is highlighted when considering that the Minister appoints members of the Commission and its chairperson and deputy-person and also has the power to remove members, the chairperson and deputy chairperson. While recognising



there are occasionally reasons why this power is important, organisations are worried it can be exercised when independence conflicts with government directions.

Clause 10: Commission's functions

The list of functions immediately highlights the concerns of our members about the costs of the Commission. We have no information about the number of charitable organisations or approved donees which will be involved, but it is clear that the Commission will need a considerable staff to carry out all the functions. We note that under (l) Clause 87 gives the Minister power to add even more functions.

Clause 11: Membership of Commission

Should the Commission become established, NCWNZ is of the opinion that three members should suffice. Whatever number is chosen however, there must be a representative from the charitable sector.

Clause 12: Commission must hold annual meeting

It is good that attendance at the Board's AGM will be open to representatives of charities, although we wonder about how many people could be involved. It is important that ideas and concerns expressed at that AGM be taken seriously. We presume that wherever "days" are referred to this means "working days".

Part 2

Charitable entities and approved donees.

Subpart 1 - Register of charitable entities

Clause 15: Qualifications for officers of charitable entities

Members believe strongly that the criteria for disqualification of officeholders are too severe. Last year NCWNZ celebrated the 110th year since women gained voting rights. Much is owed to those women who risked and experienced imprisonment for the suffrage cause. In today's society there are many people who have had short periods of imprisonment after demonstrating for important causes e.g. on environmental issues. This does not mean such persons are incapable of being effective officers of charitable entities. Indeed there are people currently in roles from which they would need to resign should these requirements be enacted.

It is anomalous that the list of disqualifications does not apply to "an officer who was appointed, under an Act, by the Governor General, by the G-G in Council or by a Minister". It appears that such an appointment makes an undischarged bankrupt, someone prohibited from being a director, been imprisoned etc suitable to be on the board of a charity. It has been pointed out that the list of exclusion is more onerous than is required for directors, MPs or even for the Charity Commissioners themselves.

Clause 16: Application for registration

(a) The words "the prescribed form" raise concerns. Unpaid volunteers who are the workers for many charities have become very weary of the increased number and complexity of forms that need to be completed, and it is one of the reasons why people are reluctant to accept responsibility in voluntary societies.

(d) "be accompanied by the prescribed fee for the application. This raises considerable concern about how much such fees will be, about who will set them and on what basis such decision will be made. We strongly recommend that the fee be proportional to the total income of the charity.

**Clause 18: Commission to register entity or decline application**

(2) While under Clause 17 (3) © the Commission must discuss reasons for possible decline of an application with the applicant, we consider that there should also be a formal appeal process. It may be that such a refusal would be open for judicial review.

Clause 20: Purpose of register. The ability of a member of the public to determine whether an entity is registered as a charitable entity and to obtain information concerning it is commended, but we are concerned to note that under Clause 19 (4) the Commission may refuse access to the register or suspend its operation if the Commission considers it is not practical to provide access to it. This seems to contradict the provisions of clause 20. We note a similar contradiction in relation to the register of approved donees (Clauses 39 and 40).

Clause 22: Contents of register

(d) The requirement that the register must include the names of all persons who have been officers of the entity since the entity was first registered as a charitable entity will provide considerable difficulty for organisations. It is over 30 years since NCWCNZ was granted its charitable status by IRD, and in that time it has probably had more than 100 officers.

A number of these people are no longer alive.

Clause 23: Charitable entity must display registration number

Displaying and disclosing the registration number at all times is acceptable. In fact the public should be encouraged to enquire as to a charitable entity's number as a way of discouraging fraudulent approaches from fund-raisers, although there will be no way of knowing whether a number quoted over the telephone is genuine. The requirement will not prevent fraudsters; they will simply invent a number. But members wonder why the IRD registration number could not be used in this way.

Clause 26 - 30: Re removal from register

Many of the criteria for de-registration seem reasonable but members are not reassured as to the position of advocacy groups working for the benefit of the community but not regarded by the government as doing so. We are also concerned that an entity can be removed from the register if 1 or more of the officers is disqualified from being an officer of a charitable entity under Clause 15, (d) or a there has been a significant or persistent failure by any 1 or more officers or administrators (g) or collectors (h) to meet their obligations or any person has been engaged in serious wrongdoing in connection with the entity (l). The entity itself should not be confused with the individuals who work for it, nor penalised because a few people have not carried out their duties correctly. Frequently this is not from evil intent, but because the people work in their own time, may not actually have sufficient expertise, or simply make mistakes. Appeals are allowed in the Bill but the extra costs involved may deter some groups from seeking justice.

Subpart 2 - Register of approved donees

Clause 47: Duty to notify changes to the Commission

Twenty working days is too short a period for notifying the commission of changes relating to a constitution or election of officers. After all, many of the entities within the charitable sector are run by unpaid volunteers with other calls on their time. Two months would be a more reasonable time.

Clause 54: Obligation to prepare annual return

As in Clause 47 the time limit of four months is unrealistic for many organisations to submit annual returns. As one member remarked after attending a seminar on the Bill convened by the Ministry of



Economic Development, "many community groups rely on the goodwill of a kind accountant to do the books." She suggested a much longer time limit. We understand that the English Charities Commission gives a 12 month period and we note that the Registrar of Incorporated Societies does not specify a time limit. The requirement by the Registrar is that the statement of financial performance must have been submitted to and approved by the members of the society before the accounts are sent to the Registrar. Many organisations will not have held their Annual Meeting within this four month period, and their accounts therefore will not have been adopted by their members.

Clause 65: Commission may require payment of administrative penalty.

We are greatly concerned that the Commission will have the power to seek a penalty payment from an officer or officers if the time limits referred to above are not adhered to. This will be yet another reason to deter volunteers from accepting positions of responsibility in charitable entities.

Clause 66: Indemnities and insurance

We reiterate our comment on Clause 65.

Clause 67: Right of Appeal

The right of appeal against certain decisions of the Commission is important, but given the pressure of work in District Courts we wonder how long it will take for such an appeal to be heard, and what will happen to the charitable enterprise, the approved donee, the persons who have made donations in good faith, and those who are expecting to receive assistance, while the appeal is waiting to be heard. This certain delay is in contrast to the "20 working days after the notice of the decision was communicated" permitted to the body to decide to make an appeal. The notice may not be received immediately, and many charities will not be able to make such a decision within less than four weeks. It will after all, mean incurring considerable cost.

Part 3

Miscellaneous matters relating to commission and other miscellaneous matters

Subpart 1 - Miscellaneous matters relating to Commission

Clauses 84 - 88: Directions to Commission and members

NCW NZ believes that in a democracy government policy should reflect the will of the people, therefore ministerial instructions to crown entities are presumed to be in the public interest. We are pleased to note that copies of the ministerial directions would be published for scrutiny and public response. Even so there is considerable concern that giving effect to government policy (Clause 86) and making independent decisions may not always be compatible.

Clauses 89 - 93: Delegation

The proposed Commission's powers to delegate give rise to concern as to expenses which may strain budgets. Both the Commerce Commission and the Securities Commission have it in their Acts that they receive Appropriation Funding. As the Charities Commission is to be self-funding, we suggest this could be matched by business financing the Commerce Commission, and brokers financing the Securities Commission.

Clause 132 - 133: Amendments to the 1994 Income Tax Act

These are the clauses regarding exempt income and rebates on charitable donations to donors giving to registered entities, such registrations being exclusively with the Commission. Members submit that even if registration with IRD is no longer required there will be a need for clear communications procedures between the IRD and the Commission and seek assurances that this is not only possible but practicable.

**Schedule 4: Amendments to other Acts**

We are pleased that the Charities Commission will be subject to the scrutiny of the Ombudsman.

Additional comments

One of our main concerns regarding this Bill was articulated in a publication issued by one of our affiliated organisation, stating: "Every time a tier of management is created, substantial new costs are introduced." NCWNZ would like to be assured that there would be compensatory reductions in other governmental costs, if/when the commission becomes official. NCWNZ appreciates the need for government legislation to keep pace with societal changes but the obverse must also be recognised; that the rapid growth of the charitable sector seems to match governmental withdrawal from some of its former social responsibilities.

Members observe that there is a great deal of duplication in the charitable sector. One respondent articulated concern about this phenomenon. She lamented the way "so many organisations ... spend so much time and energy and expertise focussed not on their customers ... but on raising money." This might be an argument in favour of a Charities Commission if related organisations were required to amalgamate.

NCWNZ commends any move to make charities more accountable but has great doubts that the proposed Charities Commission is an efficient way of doing so. Many charities will be considerably disadvantaged in order to regulate the comparatively few who abuse the goodwill of New Zealanders.

NCWNZ values this opportunity to submit the views of its members on this very important topic.

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National President

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