



National Council of Women of New Zealand

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Submission to the Ministry of Economic Development 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 Circular* to respond to current issues.

Although not one of the original groups invited to make comment on the re-drafted Bill, NCWNZ did later receive an invitation to participate, and specific questions suggested by the Ministry of Economic Development (MED) were asked of the membership, through our monthly newsletter, *The Circular*.

This submission will focus on the wider issues of the Charities Bill as well as more specifically, on how we see the Bill impacting on the objectives and structures of NCWNZ, by

- (a) commenting on our earlier submission,
- (b) noting the specific responses to the questions from MED,
- (c) raising other issues from within the Bill,
- (d) expressing specific concerns relating to NCWNZ.

Specific Comments

Original Submission

NCWNZ wishes to congratulate the Select Committee for listening constructively to the submissions made to the first draft of the Bill and for having the courage to make substantial changes therein. While not all our concerns from that draft have been addressed in the new Bill, we are pleased to note that:

In Part 2

Clause 15: the disqualification criteria for office holders has been softened;

Clause 23: no longer requires the registration number of each charity to be on every piece of literature;

In Sub-Part 3:

Clause 47: extends notification of changes relating to the constitution or election of officers from twenty working days to three months which is a more realistic expectation;

Clause 54: extends the timeframe for Annual Returns to six months, again a more realistic expectation;

Clause 66: concerning Indemnities and Insurance has been removed;

Our original submission dated 8 June 2004 contains other concerns which have not been addressed in the re-draft but in our opinion are still valid therefore a copy of that submission is appended to this one.¹

¹ Submission to the Social Services Committee on the Charities Bill, 8 June 2004



MED Questions

Following are the questions MED asked our members to address, together with a summary of their responses.

- 1) Clauses 4(a) (3) and (4)** of the Bill codify the common law as it relates to non-charitable secondary purposes. That is: an organisation undertaking non-charitable purposes, (for example, advocacy) will not be prevented from being held to be charitable (and therefore being registered) where those activities are undertaken in support of main purposes that are charitable.

(a) Do you consider that this clause provides sufficient certainty about the position of advocacy? Give reasons for your answer.

Members are concerned about the lack of definition of 'advocacy' as it relates not only to the work of NCWNZ but church organisations, asking how this can be differentiated from the 'charitable' goals of each.

(b) How do you see it impacting on the work of NCWNZ / your Nationally Organised Society (NOS)?

Responses ranged from that of 'having no impact at all' to 'being very concerned'. The question was asked, "Will stand-alone advocacy groups be covered?" There was a feeling that all non-profit organisations should be concerned as they raise funds to pay for the activities they undertake on behalf of their target group, often health or youth related.

At least one group asked whether NCWNZ itself would qualify for charitable status under the proposed regime. Should NCWNZ not qualify, there appears to be no processes that define the way in which NCWNZ could continue its work for women, children and families.

- 2)** A new exemptions clause has been added at clause 56 so that the Commission can tailor the duties and obligations that the Bill imposes on registered organisations to the needs of the individual organisation.

(a) Will this clause provide the flexibility organisations need to effectively meet their legislative duties and obligations? Explain your answer.

Although members are pleased that the stationery does not need to be changed to include the registration number they are concerned that the 'tailoring' process may involve additional documentation requirements. Therefore while extra financial costs may not be incurred, more volunteer time may well be necessary to fulfil the new legal requirements. How flexible will the flexibility be? Can we infer a 'case-by-case' situation thereby making many of the parameters set within the Bill unnecessary. NCWNZ supports the educational role of the Commission as now mooted in the re-drafted bill.

(b) Could such flexibility have a negative impact of the Commission's obligations? Give reasons for your answers.

There is a concern that the flexibility may have a negative impact on the Commission itself as the rules become blurred to accommodate sovereign and unique charities. Members expressed a concern about possible subjectivity in respect of the Commission's decisions, and ask what real ramifications will there be for groups currently tax exempt but not accepted for or seeking registration under the new regime.

(c) How could the needs of NCWNZ / your NOS best be met under this regime?

Members seek clear guidelines for and transparency of the role of the Commission. There is a fear again that NCWNZ would not qualify under the proposed guidelines, thereby losing its tax exemption status. Tax compliance costs would add an extra strain to the branches which in themselves are umbrella entities whose local members represent other organisations for which fund-raising is an on-going challenge, leaving little energy or time to fund raise for NCWNZ requirements.



3) New clauses 56A and 56F provide for umbrella registration. These clauses will enable organisations made up of multiple entities (that would each be eligible for registration on their own merits) to be registered as a 'single entity'.

- (a) Are these provisions workable, i.e., do they provide sufficient flexibility to meet the needs of the organisation? Give reasons for your answer.

All except one response favour this proposal but with several cautions. Members ask that the nature of the voluntary work undertaken by each group, currently recognised through its tax exemption status, continue to be valued through this mechanism. Flexibility of definition therefore is urged.

NCWNZ takes heart from proposed **Clause 56D (b) (ii)** which states that the (Charity Commission) Register *'is not required to separately contain the information and documents referred to in that section in relation to the entities that form part of the single entity.'*

So while Annual Reports and unaudited Statements of Income and Expenditure may be a yearly request from a National Office of its branches, this clause is interpreted as not requiring such reports, particularly the financial ones to be consolidated into a single entity report. Should this interpretation be incorrect then the cost to branches for audited accounts, or stress of getting honorary auditors to do this task would be prohibitive. As well the extra time and effort required by any national honorary treasurer to prepare such documents for annual audit would ensure that no-one applied for that position.

Indeed one response noted that the current Government policy of getting mothers into the workforce would ensure that few volunteers were available until they reached retirement.

- (b) How could the needs of NCWNZ / your NOS best be met under this regime?

Members stated that they were happy with the way our organisation currently functioned, i.e. as a branch with a parent body, and sought reassurance that consolidated accounts would not be a requirement under the proposed regime.

- (c) Do you have any other general comments to make on the workability of the changes that have been made to the Bill as a result of the Select Committee process?

Members were pleased with some of the changes that had taken place.

Concern was expressed that smaller issue-specific charities should not be disadvantaged by the changes mooted. Again continuance of the current tax exemption status was sought.

Other Issues within the Bill

NCWNZ notes that amongst the **definitions** *advocacy* is not included.

Clause 4A (1) defines the meaning of charitable purpose, giving much flexibility in interpretation. However, where a group's main work is advocacy, and any money raised is spent on the programmes and/or projects relevant to that advocacy work, will the Commission have enough flexibility to declare such a group as eligible for the charity label? Some in NCWNZ would see itself within that group.

- **Clause 10 (b)** includes within the Commission's functions *'to encourage and promote the effective use of charitable resources'*. Members query how heavy that encouragement would be and what conditions of non-compliance could arise;



- **Clause 10(n)** further states the Commission will *'carry out any other functions the Minister may direct the Commission to perform in accordance with section 87'* but NCWNZ takes heart from **Section 88** which seeks to ensure the independence of the Commission from, one supposes, Government interference. However **Clause 86 (1)** states that the Minister may direct the Commission to have regard to a government policy that relates to the Commission's functions and objectives. NCWNZ couldn't come up with an instance that would make this clause necessary.
- **Clause 12 (5)** relates to the holding of an annual meeting, stating that the means of notifying such a meeting will be limited to *'...principal newspapers circulating in the area or region in which the meeting will be held and (b) on a web-site maintained by, or on behalf of, the Commission.'* Members find this intention disenfranchising to the Charitable groups, as all, fee-paying or not, should be entitled to a written notice of the meeting and the opportunity to attend and speak.

The provisions for serving notices as noted in **Clause 64** could be a useful parallel.

- **Clause 46A** requires *telephone and internet collectors to disclose registration number on request.* NCWNZ would see this as a most important use of the registration number as canvassing for funds by these media increase.
- **Clause 57 (2)** lists the powers of the Commission in relation to the activities of any charity including *'the power to examine and inquire into*
 - (a) the activities and proposed activities of the charitable entity or person:*
 - (b) the nature, objects and purposes of the charitable entity or person:*
 - (c) the management and administration of the charitable entity or person:*
 - (d) the results and outcomes achieved by the charitable entity or person:*
 - (e) the value, condition, management, and application of the property and income belonging to the charitable entity or person.'*

Clause 57(2) provides the Commission with significant power to police a charity and to investigate its activities. Our members have some concern that this may lead to political interference.

- **Clause 111** offers the Commission the option of using a bank outside New Zealand and NCWNZ asks why this option should even be considered.
- **Clause 119** allows the Minister to *'require the Commission to pay to the Crown a sum equal to the whole or any part of the net surplus of the Commission'* NCWNZ questions the ethics of such a proposal, wondering why the Commission would not allow the Charitable sector to benefit from such surpluses by reduced costs. It is still not clear what the sector will have to pay to comply with the proposed Bill. It is understood that costs will be carried by the Government in some way for seven years, although not spelt out in the Bill. NCWNZ asks why the limitation to seven years is considered necessary. There is also the question of why the costs of running the Commission should fall on the Charities when other regulatory bodies, e.g. Commerce Commission, are funded by the Government.
- It is a constant concern to NCWNZ that when making submissions on Bills the detail of proposed regulations are not disclosed. It is contended that the detail of such regulations actually decide whether a Bill will benefit a situation or not. For instance, information supplied with the original Bill mentioned a level of payment fees which would be discounted if paid on-line. NCWNZ believes that this immediately disenfranchises smaller groups who would not necessarily choose or be able to have on-line banking facilities. Given the expected level of



skill required to handle payments it is considered that paperwork is no less onerous than on-line work and assume hard copies of transactions will need to be generated, thereby dispelling any perceived advantage of on-line activity. **Clause 139** allows for the setting of the prescribed forms, the prescribed fees and compliances, all issues that we submit should be included in the discussion process. How else can a total proposal be truly measured?

Concerns relating to the Aspirations and Structure of NCWNZ

NCWNZ notes the following definitions within the Bill.

Clause 4A (1) defines charitable purpose as including *'every charitable purpose, whether it relates to the relief of poverty, advancement of education or religion, or any other matter beneficial to the community.'*

Clause 4A (3) states *'To avoid doubt, if the purposes of a trust, society, or an institution include a non-charitable purpose (for example, advocacy) that is merely ancillary to a charitable purpose...'*

The following quotes are from the **NCWNZ Constitution**.

Preamble: The function of the National Council of Women of New Zealand (Inc) is to serve women, the family and community at local, national and international level through study, discussion and action.

Objects:

1. To unite women for mutual counsel and co-operation, and all that makes for the good of humanity.
2. To promote the spiritual, moral, civil and social welfare of the community.
3. To work for such conditions of life as will assure to all the opportunity for full and free development.
4. To work for the social, legal and economic advancement of women.
5. To collect and redistribute information of service to the community.
6. To form a link with the National Councils of Women of other countries, through the international Council of Women.

Other rules say the Council is non-party-political and non-sectarian; that the membership comprises Branches, Nationally Organised Societies (NOS), Individual Members, the Board of Management, National Life Members and Honorary Members at National Level.

It should be noted that, apart from two paid administration staff, all research, study, Board and Branch activities are performed by volunteers. The challenge as we see it, should we choose to register with the proposed Commission, is whether there is flexibility enough within the prescribed parameters to embrace the work of NCWNZ as being charitable and the advocacy as being secondary to that. It is suggested that the lines are blurred.

Yet over the years Ministers, other Members of Parliament, Select Committees, Senior Management in Ministries and other organisations have told us both verbally and through correspondence, that the work done by NCWNZ is important and very much valued. As a Civil Society Organisation, representatives have been involved in presentations to the United Nations, and just recently included in the Government Party to a Pacific Conference.

The National Board is the governing body with semi-autonomous branches throughout New Zealand. Membership at Branches comprises representatives from Nationally Organised Societies, Individual Members, Associate Members and Branch Life Members. As stated earlier under this Bill each Branch could be called an umbrella entity, but most members see the National Board as fulfilling that role on their behalf.

Each Branch has an annual general meeting where officers are elected and a Statement of Income and Expenditure is presented. The Constitution does not require this to be audited, understanding



that monies passing through the Branch books would scarcely warrant the cost of an audit. The Board of Management on the other hand complies with all requirements of an Incorporated Society NCWNZ does not raise funds per se, but seeks funding for specific projects, ones that further enhance its ability to carry out its objectives.

Compliance expectations of the Commission now become an issue as the practicalities emerge.

After Branch Annual meetings, returns are filed as individual returns with the National Office. Does the proposed Commission really want to deal with thirty-three Branches consolidated into the reports from the NCWNZ National Office?

As stated earlier Branches are not required to have their annual accounts audited, but they are expected to be filed with the National Office. The Bill is not clear as to the extent the single (umbrella) entity would be required to report. NCWNZ does not believe that it would be desirable or ethical to merge Branch unaudited returns with the organisation's fully audited accounts.

If and when the regulations are formed, NCWNZ is required to use different processes, some may require constitutional changes which can take up to two years. Will that hinder our status? Or will common sense prevail and accept rules or forms in current use, if they meet the expectations and provide the information being sought.

So many of these issues could be addressed if the regulations as mooted were clearly stated now.

Summary

Generally members are more comfortable with the re-drafted Bill while expressing caution about how the Commission will work in practice. Concerns include how much influence the Minister will seek to have on the work of the Commission, what fees will be set and how the single (umbrella) entity structure will affect the NCWNZ processes as currently practised.

NCWNZ endorses the concept of allowing flexibility of interpretation while wondering if such flexibility actually renders much of the detail of the Bill redundant.

Our members would prefer that the process not proceed until the proposed regulations are drafted and a submission to them is possible. As stated in an earlier letter (24.11.04) to the Chair of the Social Services Select Committee *'There have been a number of instances in recent times when Parliament has had to pass amendments or corrections to new Acts because they were found to have contained mistakes. We do not believe haste is necessary in this case. It would be better to have good legislation thoughtfully developed over time than pass poor legislation produced to meet some obscure timetable.'*

In conclusion NCWNZ wishes to thank the writers of the re-drafted Bill for the very clear way the re-draft has been set out, by including the original clauses with the changes in such a way that made following those changes relatively simple. That is until **Part 3 Sub-part 2, Clauses 131-133B** introduced the intended changes in the **Income Tax Act 2004**, which reverted to the usual style of just noting the changes without the reader having any idea what the original said. This style makes it very hard for NCWNZ members around the country to do in-depth research to many Bills as access to all appropriate Acts is not always possible and it is certainly beyond the resources of our National Office to supply this information.

Thank you for the opportunity to make a further submission to the Bill.

Christine Low
National President