



**Community
Housing
Aotearoa**

NGĀ WHARERAU O AOTEAROA

PO Box 11543
Wellington
New Zealand
Ph 04 385 8722
www.communityhousing.org.nz

Committee Secretariat
Social Services and Community Committee
Parliament Buildings
Wellington
ssc@parliament.govt.nz

9 December 2022

Re: Submission on the Charities Amendment Bill

Introduction

1. Community Housing Aotearoa – Ngā Wharerau o Aotearoa (CHA) is a national peak body for New Zealand's community housing sector. Our 75 provider members provide homes for nearly 30,000 kiwis nationally across 18,520 homes, and our 43 partner members include developers, consultants, and local councils.
2. We thank the Select Committee for the opportunity to submit our comments on the proposed amendments to the Charities Act (the Act). Nearly all our provider members are currently registered Charities or are wholly owned and controlled subsidiaries of Charities. As a sector, we have been impacted by the current approach to implementing the Act. We are actively engaged with Charities Services and have previously provided input and feedback through our engagement with the Sector User Group and two submissions in 2020 and 2021.
3. We also thank the Select Committee for the extension of time to submit our views on the Bill as requested by many Charities.

[We support the widespread requests from the Charities sector to have a first principles review](#)

4. We continue to emphasize the need for an independent review of the Charities Act. Many of the concerns our members have with regards to how the definition of charity is being interpreted has not been addressed through this amendment bill. In our view, the current process of court judgments defining 'charitable purpose' is fatally flawed. This is because this process is not grounded in natural justice. There have been previous promises of a full review and the decision not to have this is disappointing.
5. We strongly recommend a robust and inclusive full review be done through an independent body such as the Law Commission to address underlying issues that our sector faces and ensure lasting Charities. The current approach is grounded in the monarchist and mercantilist 17th century Elizabethan era and is no longer fit-for-purpose in 21st century Aotearoa.
6. Following are our comments on the proposed amendments in the Charities Amendment Bill.



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Reporting requirements of charities

[We support the proposed amendments to reduce reporting requirements for small charities](#)

7. We welcome reducing the financial reporting requirements for small Charities. We note that nearly three quarter of Charities are without any full-time staff and nearly 60% have less than \$125,000 of expenditure. They are also obliged to meet numerous other legal obligations (e.g. Health & Safety, Societies and Trusts Acts, IRD, etc.). We support the existing financial reporting requirements for larger charities.

[It is unreasonable to require Charities to provide an annual review of procedures](#)

8. The annual review of procedures is an unreasonable expectation. It is already very challenging and time-consuming to meet the present and ongoing requirements of many legislative reforms. Legislating to enforce this review is excessive. Rather than regulate, an educational approach is the best.
9. With incoming changes to the Incorporated Societies Act, at least 25% of Charities will have to review their rules. It has been suggested that the frequency of this requirement will result in many small organisations simply ticking a box¹.
10. It could be the role of Charities Services, through education and collaborative work with organisations to encourage the renewal of their governance procedures. CHA works with many organisations in our sector to encourage greater understanding and use of their constitutions and purposes. It is regulatory overreach to request that this be required annually of Charities.

Regulatory decision-making and appeals

[CHA has previously advocated for a new approach to the appeals process as the current system has not worked well for Charities.](#)

11. The Bill does not address our previously expressed concerns regarding the ability for entities to object to decisions made under the Act. We believe that charities should be able to appeal all decisions under the Act, not just those of registration and deregistration.
12. Charities should also be able to have an oral hearing of evidence (a “trier of fact”). The Charities Act currently does not allow evidence to be called or witnesses to be cross-examined.
13. We support enabling charities to go to the Taxation Review Authority (TRA) prior to appealing a result with the High Court. This is one of the options we previously suggested to improve the ability of charities to appeal decisions. However, this process must incorporate our points in 7 and 8 above to make real improvements.

¹ <https://irp.cdn-website.com/96a27c73/files/uploaded/Submission%20on%20the%20Charities%20Amendment%20Bill%202022%20-%20CNA.pdf>



14. We recommend that the TRA adopt a programme of ‘test case litigation’ where a case has broader implications beyond an individual dispute.
15. We are pleased to see that the timeframe for lodging objections and submitting information has lengthened to two months.

Requirements for officers and governance

16. Regarding the definition of officers, we support the proposed amendment to bring consistency between the Charities Act and the Incorporated Societies Act. However, we also support Sue Barker’s comments that this will just continue the error “for consistency” and we refer to the history of the accidental nature of how we have arrived in this situation².
17. We do not support the ability of Charities Services to remove an officer. This is the role of the governing board of the charity. This concern is further discussed in points 18 and 19.

We are concerned about the unintended consequences of the proposed expanded definition

18. The expanded definition of officer to include “a person who is able to exercise significant influence over the management or administration of a charitable entity³” could mean that staff and advisors who have ‘significant influence’ over governance and management may be deemed as officers.
19. This is gravely concerning given the proposed disqualification outlined under new section 36C that could extend this disqualification to staff members deemed as officers. Does this mean Charities Services could potentially dismiss staff members? If so, this would serve to remove the employment rights of that individual and withdraw the responsibilities of the organisation’s governing body.

Concerns not addressed in the Amendment Bill

20. Our fundamental concern is that the choice to not undertake a first principles review leaves unresolved core issues expressed by Charities over many years. Primary amongst these is advocacy by Charities in furtherance of the purposes. We restate below our prior views on this.
21. Advocacy is an important activity which Charities should be using to advance their charitable purposes. Changing the legal and policy environment to promote charitable purposes should be explicitly supported by the Act.
22. The current approach to evaluating advocacy activities risks inhibiting free speech. It is for the public to decide whether the points of view expressed by a charity in its advocacy are persuasive and convincing. Charities Services should not position itself as a regulator of ideas and opinions.

² See pages 435-438: <https://www.lawfoundation.org.nz/wp-content/uploads/2022/04/Charities-Law-Reform-Report-April-2022.pdf>

³ Page 7 of the Explanatory note, Clause 4, Amendment Section 4



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23. All advocacy that is neither partisan political activity nor hateful nor likely to give rise to civil unrest should be allowable.

Community Housing Aotearoa welcomes the opportunity to speak in support of the above at the Select Committee hearing.

Ngā mihi,

Vic Crockford, CEO, Community Housing Aotearoa – Ngā Wharerau o Aotearoa

