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Submission to the Department of Internal Affairs on Modernising the Charities Act 2005

Introduction

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 14 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion, and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
2. This submission has been prepared by the NCWNZ Consumer Affairs Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Summary

3. NCWNZ supports the aims of the Charities Act 2005, namely,
 - to promote public trust and confidence in the charitable sector; to provide for the registration of societies, institutions, and trusts as charitable entities,
 - to place certain obligations on charitable entities, such as annual reporting in return for being listed on the charities register, and
 - obtaining tax exemptions on most income under the Income Tax Act 2007.
4. NCWNZ accepts that being a registered charity is valuable for charitable organisations, as it provides assurance to the public that an organisation has met certain criteria and acted in a responsible manner. It ensures public trust and confidence in charities so that charitable organisations can focus on making a difference to the lives of ordinary New Zealanders.
5. However, NCWNZ considers that the 2005 Charities Act needs to be updated and modernised to ensure that the Charities Registration Board ('the Board') is independent of the government of the day, and is scrupulously fair and transparent in its operations.

In general, we think the definition of a charity should be broadened so that there is greater freedom for charities to advocate for policy or law changes in the fields in which they work, and that the role of the Board should be to work alongside the charitable sector, and to support and encourage charities, rather than to focus on their regulation. We also believe that Te Ao Māori principles should be incorporated into the Act and its administration.

6. We consider there is an urgent need for a greatly simplified, less punitive and more accessible appeals process which would permit an organisation under threat of de-registration to provide new evidence to support an appeal.
7. NCWNZ went through an arduous, expensive, time-consuming, and debilitating process to successfully appeal our de-registration as a charity. The lengthy and expensive appeals process drained the energies of our voluntary organisation, cost our organisation dearly and impacted on the ability of our organisation to continue its important core work.
8. That is why we consider the present system, in which the only option open to an organisation wishing to appeal a decision by the Board is to appeal to the High Court or take a judicial review, is punitive, time-consuming, and prohibitively expensive for the majority of charities. It is completely unacceptable, too, that there is no opportunity under the present system for a charity to present additional evidence in support of its application directly to the Board, or any other mechanism available to charities to challenge the decision of the Board.

Structure of the Charities regulator, decision-making, and appeals process

9. NCWNZ agrees there is a perceived lack of transparency, independence, and accountability in the Board's decision-making processes. This undermines its reputation for fairness and legitimacy.
10. The independence of the Board would be enhanced if the operation of the Board were separated from the Charities Services. The Board should have its own secretariat and be able to appoint additional members to the Board with a broader range of expertise and diversity of perspective.
11. We would support a new penalty for a charity that gives false or misleading information on its registration application. We do not agree, however, that a criminal conviction should automatically disqualify someone from becoming an officer, as there could be instances where previous challenges in the justice system would provide useful background for holding an office in a charity.
12. We support the proposal outlined in the consultation document that an easily accessible Appeals Panel needs to be established to assess appeals. The Appeals Panel should work alongside, but be independent of, the current Board, and should consist of an individual or a small group of individuals who have expertise in charities legislation.
13. It is important that the composition of the Board reflects the make-up of society in terms of gender, ethnicity, age, disability, region etc, and that the process of nominating members for the Board is transparent and equitable.

14. We agree that a charity at risk of de-registration should be able to provide new oral and written evidence to the Appeals Panel in support of its appeal.
15. While no case law would develop from such a simplified appeals procedure, the Appeals Panel's decisions would provide guidance to the regulator.
16. We also support the proposal for the establishment of a Test Case litigation fund to provide financial assistance to registered charities under risk of de-registration, to cover some or all of the costs of their appeal. We agree that to be eligible for public funding, the case would need to be in the public interest or have significant implications for the sector. We do not agree that for access to funding to be available, the appeal would need to involve an issue where there is uncertainty about how the law operates.

Compliance and enforcement powers of the Charities regulator

17. NCWNZ agrees that Charities Services should focus their efforts on education and support for charities to help them comply with the provisions of the Charities Act, rather than imposing extra layers of bureaucracy and compliance that is onerous and costly for charities who rely heavily on volunteers. The current online clinics that allow charities an easy and accessible way to talk over issues with Charities Services staff are an example of the practical support required.
18. It would be useful if governance standards were included in the information packages and Rules of Trust provided to organisations applying for charity status. Additional suggestions include offering face-to-face support to charities and providing more accessible guidance and tools, such as a user-friendly website. If the Charities Service proactively monitored and reviewed application mistakes and offered solutions on their website, compliance issues would diminish. Any repetitive queries/non-compliance issues could be highlighted and adjusted on the application forms/check list.
19. In our view most issues could be resolved by providing additional support to organisations that are struggling to comply with all sections of the Charities Act and for this reason we would like to see more guidance and support provided to charities.

The role of officers

20. The role of officer is fundamental to the success of charities, with many working as volunteers in small charities. NCWNZ agrees that the role of officer should broaden to include a person occupying a position where they have significant influence such as the management or administration of the charity.
21. To build the governance capability in the not-for-profit and charities sector NCWNZ is supportive of Charities Services producing a comprehensive guide outlining the duties of running a charity, including a self-evaluation tool for improving governance.
22. Our organisation has mixed views on whether there should be a minimum age for the appointment of officers. Some members consider that to have the necessary governance and financial management experience, 18 should be the minimum age, while others consider that there could be instances where someone under the age of 18 could, with appropriate mentoring, fit the criteria and governance rules and acquire the requisite skills to become an effective officer at the age of 16. It would then be up to members of that society to vote, appoint or accept as a volunteer such a person to an officer position should they meet any set criteria.

Conclusion

23. We strongly support the proposal to modernise and update the Charities Act; to simplify the appeals procedure and for the Board to give greater latitude for charities to advocate for change, especially in areas that they address in their work, so that they can be strong and effective voices in the communities in which they operate.



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