

Citizens Advice Bureau



Ngā Pou Whakawhirinaki o Aotearoa

09/12/2022

Submission to:

Social Services and Community Committee

Subject: The Charities Amendment Bill

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Charities Amendment Bill. Please contact us if you have any questions, or want any clarification about our submission.

Please note that we wish to appear before the Committee to speak to our submission.

Contact Person:

Kerry Dalton
Chief Executive
Citizens Advice Bureaux New Zealand

Phone: 04 471 2735

Email: ceo@cab.org.nz

CABNZ submission to the Social Services and Community Committee on the Charities Amendment Bill

Introduction

Citizens Advice Bureaux New Zealand | Ngā Pou Whakawhirinaki o Aotearoa (CABNZ) welcomes the opportunity to put forward our views on the Charities Amendment Bill. Like thousands of other community organisations working for the enhanced well-being of people in Aotearoa New Zealand, we have a strong interest in legislation affecting charities and the measures taken at government level to support the work of our sector and the valuable role we play in New Zealand society.

We would like to speak to our submission and engage with the Social Services and Community Select Committee (SSCSC) directly on the Bill during the hearings.

About Citizens Advice Bureau

CAB is a nationwide, and locally based, community organisation that provides a free, confidential, and independent service of information, advice, and advocacy. We help people know and understand their rights and responsibilities, to take steps to act on these, and to connect with additional community services they may need. Our service is delivered from over 80 locations around Aotearoa by over 2,000 trained CAB volunteers.

Citizens Advice Bureau works to empower individuals to resolve their problems and uses the insights gained from clients' experiences to show when policies and laws or their implementation are having a negative impact on people and to advocate for positive social change.

Each CAB is an independent legal entity which is funded locally. All CABs are members of the national body, CABNZ, which provides national systems that support quality and consistency of operations and service delivery. The way the CAB is structured and funded optimises the benefits of the local identity, connectedness and responsiveness of CABs that are accountable back to their community, combined with the efficiencies and effectiveness of national systems to support consistency and quality of service.

Withdraw the Bill and conduct the promised first principles review

We urge the Social Services and Community Select Committee to recommend that this Bill be withdrawn. We ask this for 2 reasons:

1. Because there needs to be a first principles review of the Charities Act, instead of limited amendments to the existing framework
2. Because this is a flawed piece of legislation with the potential for negative impacts from amendments that have not been properly scoped or consulted upon.

1. The need for a first principles review

Like many other organisations within the community sector, CABNZ has long called for a first-principles review of charities legislation in Aotearoa. This is particularly important because of the overlap of charities with civil society and a healthy robust democracy.

The CAB is a civil society organisation, with volunteerism and civic engagement at its very core. The CAB is also a charity. Our volunteers provide services to support and facilitate people's rights, which promotes social connectedness, participation and democracy and supports people to be active and informed citizens.

It is widely acknowledged that the independence of civil society organisations from government is critical to both their function and their efficacy in carrying out their role.

This raises the fundamental question of whether the state, in the form of a government agency, no matter how well-meaning and competent that government agency is, should be the regulator of civil society organisations and decide what parts of their advocacy and the checks and balances that they provide are acceptable. This is part of the complexity which requires a deeper and wider review of the Charities Act.

Instead what is being proposed here are limited amendments to the existing framework, taking a reductionist view by using a lens of taxation and regulation. This not only limits the potential of civil society, but also limits democracy. It entrenches a regime which fails to properly acknowledge and respect the fundamental role of civil society as necessarily independent from government and instead through this Bill seeks to encroach further into that independence in questionable ways, which are discussed in more detail in the section below.

In the Explanatory notes, under the contest sections, it is stated that:

The Charities Act provides a registration, reporting, and monitoring system for approximately 28,000 registered entities that carry out charitable purposes. The fundamental elements of the Charities Act (including the definition of charitable purpose) are considered sound and fit for purpose.

This raises the question of considered fit by whom? Certainly not by the majority of the charities that submitted to the 2019 review. AS DIA stated in its summary of submissions:

Nearly all of these submitters stated that the scope of the review should be widened to include: the definition of charitable purpose, tax issues, and other legislation that impacts charities, such as the Incorporated Societies Act 1908.

Around two thirds of these submitters sought an independent review of the Act. These submitters were concerned about the independence of the review (which is led by the Department of Internal Affairs' policy group) from government and from Charities Services (which is also part of the Department of Internal Affairs).

Nearly half of these submitters called for the review to be referred to the Law Commission. There was an overwhelming call for a first principles review of the Charities Act 2005, including the definition of Charitable purpose.

1. The Charities Amendment Bill is flawed legislation

The Regulatory Impact Statement (RIS) of the Charities Amendment Bill states:

There is a lack of strong quantitative evidence and data to support the work. A lot of the evidence in the work to modernise the Charities Act is anecdotal, based on discussions and submissions from stakeholders. We sought data from Charities Services and in some cases did not have large amounts of data to provide an appropriate representation of the sector, or the data we sought was not collected, or not in a way that was useful to our work. Pg. 9

Problem statements are given for each of the eight regulatory proposals, which fit within an overarching problem definition for the package of measures. The quality of these statements is variable, in some cases making it harder to see how the recommended options would impact the identified problem. Pg. 10

We take this to read that not only did they not know if there is a real problem or if there is, if it is significant but on top of that, they do not know whether the proposed amendments contained in this Bill are going to have any effect on the problem. A number of the proposed amendments have been drafted and proposed without consultation with the sector, so on top of the limitations quoted from the RIS, they have also not informed by the expertise and experience of the sector as to their impact.

We note that one of the stated aims of the Bill is to improve transparency. In our view the critical lack of transparency is with the system that has been established for registering and regulating charities, and the way charities are being shut out of strategic conversations and decision-making about the sector.

Key proof of this is the ignoring of the persistent and widespread call from our sector for a first-principles review, and instead, the offering of a review with a constrained scope that did not allow for fundamental questions to be addressed, and a Bill, coming out of that review, that contains clauses (which we address in more depth below) which would further reduce the rights and agency of organisations, impose onerous requirements for no clear purpose, and cause confusion about the roles and legal obligations of individuals within charitable entities.

This approach has led to flawed legislation that does not do justice to the importance of what is being considered for the negative impact that it can have on organisations contribution to public good and a robust and healthy democracy.

Key areas of concern that we have include:

Definition of Officers

Clause 4(1)(a) expands the definition of an officer to include (among other things) “a person who is able to exercise significant influence over the management or administration of the entity”. The issue here is that this definition is too broad, potentially capturing people within it whom it shouldn’t i.e. it could be interpreted to apply to people who are not even a part of the registered charity, which would be problematic.

It is important for individuals and organisations to understand who falls under the definition of an officer. Officers of a charitable entity are responsible for ensuring that their organisation is run in accordance with its rules and the requirements of the Charities Act. They have a crucial role in ensuring that their organisation’s funds and assets are used exclusively to advance the charitable purpose of the organisation.

Rather than providing clarity, the Bill confuses whom should be classified as an Officer.

The Bill also gives the Charities Registration Board the right to disqualify an officer. We consider that there are likely to be unintended consequences to this. It is this kind of regulatory change that shrinks the legal independence of Charities from Government and disrupts the very structure of the Community Sector and demonstrates that the wrong framework and system is being envisaged.

The Appeals Process

The fundamental right of appeal must be that charities have the opportunity to appeal all decisions made by both the Charities Registration Board and the Chief Executive of the Department of Internal Affairs. However Clause 58A(1) of the Bill would only allow charities to appeal four types of decisions made by the Chief Executive of the Department of Internal Affairs, and they are: (1) to remove or omit from the register any information or documents that relate to a charitable entity, (2) a decision on an application by an entity for approval to change its balance date, (3) a decision on an application by an entity to grant, vary, or revoke an exemption and (4) a decision on a request by an entity for it and another entity to be treated as a single entity.

It is not right, in our view, that the Department should be able to make decisions about charitable organisations for which the organisations have no right of appeal. As matter of justice, charities must be able to challenge decisions, and the system must be accountable for all decisions made under the Act. The fact that this Bill is proposing to limit this right without making this explicit as a lessening of appeal rights does not promote trust and confidence in the good faith and transparency of the regulator and the regulatory system and in our view, reinforces the need for an independent first principles review and the withdrawal of this Bill.

The annual review of governance procedures

Clause 42G(1) of the Bill introduces a new requirement, for charitable entities to review their governance procedures on an annual basis. While organisations should of course ensure their governance procedures remain current and continue to reflect and support their charitable purpose, it is excessive to require this to be an annual process and one which is mandated in statute with accompanying sanctions for non-compliance. All charities already have a legal obligation to act in good faith to further their stated charitable purpose in accordance with their rules. The case has not been made for this additional administrative burden - we are not clear why this clause was added to the Bill, because, as previously mentioned, this policy was not discussed with the sector before being included within it. In our view, organisations should be able to review their governance procedures on a timeframe which makes sense for them, and that assistance and support is provided in this area for organisations who may need it, rather than imposing a legislated one-size-fits-all annual process on all charitable entities.

We refer the Select Committee back to the Regulatory Impact Statement quoted above about the lack of clarity in problem definition and in the impact of the options being proposed.

Conclusion

We are deeply concerned by the flawed nature of this piece of legislation as evidenced by our call for the Social Services and Community Select Committee to recommend that this Bill be withdrawn. There is a lot at stake here, including protecting the independence of civil society and its contribution to a healthy democracy.

We value the opportunity to express our concerns through this submission. We welcome opportunities to make further input and would like to appear before the committee to discuss our submission.

Kind regards

Kerry Dalton
Chief Executive