



5 December 2022

Social Services and Community Select Committee
Parliament Buildings
Wellington

Tēnā koe

Submission on the Charities Amendment Bill

Alzheimers NZ welcomes the opportunity to submit on the Charities Amendment Bill (the Bill).

Alzheimers NZ represents people with dementia and their care partners. 70,000 New Zealanders living with dementia in 2020 and this number is expected to reach 170,000 by 2050¹ due to the growing ageing population. Alzheimers NZ raises awareness of dementia, provide information and resources, advocate for high quality services, and promote research about prevention, treatment, cure, and care. We support local community based Alzheimers and dementia organisations throughout New Zealand. These organisations provide support, education, information, and related services directly to members of their communities who are affected by dementia.

Charities in Aotearoa New Zealand

Charities have contributed a great deal to life in this country. Their work covers many aspects in our society including providing essential services for community. During COVID-19 pandemic over the past two years, the role of charities in supporting fellow New Zealanders has become even more important and apparent.

The charitable sector is large and diverse. The sector makes a vital contribution to the economic, social, and political sectors of this country. In 2021/2022 financial year, \$73 billion in assets and \$23 billion in income were held by 28,000 registered charities in New Zealand. More than 98,000 people work full time in the sector, which contributes to around 5% of the workforce in Aotearoa. In addition, 208,000 volunteers contribute approximately 1.7 million hours every week to charities.²

Charities are an investment because they must comply with corporate governance in terms of professionalism, management, accountability, and transparency in their activities to fulfil their obligations. The charity sector should be able to work autonomously without direct governmental involvement.

Alzheimer NZ's position and comments on the Bill

Alzheimers NZ supports the intention to modernise the outdated Charities Act 2005 but considers the Bill has not achieved that outcome. We call for the Bill to be withdrawn and an independent first principles review of the Charities Act 2005 and its implementation be carried out.

Our comments on the Bill are outlined below and cover: a first principles review of the Charities Act 2005, financial reporting, appeals process, regulatory decision-making, the roles of officers and governance of charities, and regulatory compliance enforcement tools.

Alzheimers NZ does not believe it necessary to be heard by the Committee on this submission.

1. First principles review of the Charities Act 2005

The proposed changes to the Charities Act 2005 (the Act) are intended to focus on practical improvements to modernise the Act and to align the Act with other relevant legislation, such as the Companies Act 1993, Trusts Act 2019, Incorporated Societies Act 2022 and the Charitable Trusts Act 1957.

Alzheimer NZ's view is that the Bill has failed to take the opportunity to consider what is needed to modernise the Act, nor does it address the issues raised by the charity sector such as the definition of charitable purposes in a changing world, tax exemptions, and issues of advocacy. If the Bill is passed, there will be lost opportunity for modernisation of charities and the law may not benefit New Zealand communities.

2. Financial reporting from small charities

Under section 42AC of the Bill, the Chief Executive of the Department of Internal Affairs (the DIA) will be given power to exempt very small charities from the External Reporting Board's reporting standards and will replace it with financial information in their annual return. We support this change for very small charities but suggest that providing such an exemption should not require new legislation.

3. Appeals framework process

The Bill will change the process to hear first instance appeals on the Act, where appeals will be heard at the Taxation Review Authority (TRA) rather than directly to the High Court. In this process, the charity's right to appeal directly to the Supreme Court will be removed. This appeal mechanism may reduce the legal costs and allow charities to represent themselves, but charities will need to file in two courts should they file for judicial review proceedings. The charities will then be required to incur extra expenses and the uncertainty of an additional application.

4. Regulatory decision-making

The Bill will increase the DIA's ability to make the most decisions, and not the independent Charities Registration Board (the Board). If the Bill is passed, the Board only makes a few of the decisions and most decisions will be made by a business unit a government department, and charities will have limited ability to challenge those decisions. The Bill will also provide an increase in DIA's powers without corresponding accountability. This is the opposite to the much-needed collaborative approach that the government should be facilitating with charities and volunteer work.

5. The role of officers and supporting the governance of charities

Although the Bill lists people who can be disqualified from holding officer roles in charities, the definition of 'officer' is unclear what this means and what the legal duty of the role cannot be applied. As currently drafted in the Bill, it may be difficult to determine who will, or will not, be covered by the definition of 'officer.' If the definition is too broad, it could include people not contemplated or appropriately included in it.

We do not support Section 42G of the Bill requiring charities to review their governance procedures annually. The proposed change should be removed, because requiring charities to undertake this process annually will be unnecessarily costly and time-consuming without achieving any benefit in terms of improving the governance of a charity.

6. Regulatory compliance enforcement tools

The Bill will give the Board a power to disqualify an officer for 'serious wrongdoing' or significant or persistent breaches of obligations, but without deregistering the charity itself. The responsibility for disqualifying an officer for serious wrongdoing should sit with the charity first rather than with the Board, and the Board can only recommend the charity to remove the officer if that officer has engaged in serious wrongdoing.

Recommendation

Alzheimers NZ's view is that while there are some positive changes being proposed, there are some missing elements in the Bill that have potential to disadvantage the charity sector. Our recommendations, should the Bill be passed are:

1. Simpler financial reporting from small charities

The External Reporting Board should provide clear guidelines and/or a framework that accompanies the proposed change to exempt very small charities from financial reporting (such as the definition of very small charities), transition timeframes for reporting minimum requirements, and clear expectations.

2. Regulatory decision making

While developing guidelines or other resources, the DIA should conduct a wide and open consultation process with the public, peak bodies and other entities that represent various points of view - rather than to consult with organisations that already agree with or deemed representative by the DIA alone. Tangata Whenua should also be appropriately represented on the Board to ensure the level of diversity the Bill intends to achieve.

3. Appeal framework process

Should the first instance appeal on the Act be held at the TRA, the appointed Authority Court judge should have a strong background in charities law. The DIA's Proactive Release Regulatory Impact Statement Modernising the Charities Act indicates that the appointed Court Judge or lawyer will have at least seven years' experience³. A simpler and less expensive appeals process should be included in the Bill to assist charities that need to file in two courts if they file for judicial review proceedings.

4. The role of officers and supporting the governance of charities

The DIA should provide a clear definition of ‘officer’, in which the proposed definition can then be adopted to ensure consistency.

5. Regulatory compliance enforcement tools

The Board and the DIA should publish information on policies and procedures to guide charity organisations.

Conclusion

The charity sector is essential and vital to Aotearoa’s communities leading healthy and equitable lives. The sector is a vital partner to government in sustainable domestic development aspects, including in social, economy and equity.

Alzheimers NZ calls for the Bill to be withdrawn. The proposed changes in the Bill will not only increase the Government control of the charity sector and reduce its independence, but also will reduce the sector’s contribution to democracy and ability to deliver its purposes.

Legislations to support charities while undertaking their work and contribution to communities should be sufficiently transparent to interested parties and the public. Should the Bill be passed, it should be amended to provide for clear guidelines and a framework for simpler financial reporting from small charities, simpler appeal framework process, an open consultation process to promote transparency and fairness, a clear definition of ‘officer’, and better compliance and enforcement process.

Ngā mihi nui

Catherine Hall
Chief Executive

¹ Ma’u E, Cullum S, Yates S, Te Ao B, Cheung G, Burholt V, Dudley M, Krishnamurthi R, Kerse N. [Dementia Economic Impact Report 2020](#). Auckland, New Zealand: University of Auckland; 2021.

² Charities Services - Ngā Ratonga Kaupapa Atawhai. NZ Department of Internal Affairs. [Charities Services Annual Review 2021/2022](#). Wellington 2022

³ Te Tai Ōhanga – The Treasury. [Regulatory Impact Statement: Modernising the Charities Act](#).