



Social Service
Providers
Aotearoa

Submission to the Social Services and Community Select Committee on the Charities Amendment Bill

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Introduction & Background

1. Social Service Providers Aotearoa (SSPA) welcomes the opportunity to submit on the Charities Amendment Bill (the Bill) and appreciates the decision made by the Social Services and Community Select Committee to extend the submission period in response to a request supported by more than 115 charities.
2. This submission provides SSPA's views and feedback on the following sections within the Bill:
 - a) Financial reporting requirements for small charities
 - b) Decision-making and appeals framework
 - c) Definition of officer
 - d) Requirement for one officer to be over 18 years old
 - e) Annual review of procedures
3. SSPA advocates for better and more equitable socio-economic outcomes for children, rangatahi, and their families and whānau. We champion our members who are community-based social service organisations and their kaimahi, working alongside children, rangatahi, families and whānau every day and over the long-term, through the complexity of multiple and often persistent challenges, and to prevent these from occurring in the first place.
4. SSPA's submission is informed by SSPA members, whose perspectives on the Bill were gathered through an online hui facilitated by SSPA on 24 November 2022. This Bill is of relevance to SSPA members, most of which are registered charities and either incorporated societies or charitable trusts. SSPA itself is a registered charity and an incorporated society.

About Social Service Providers Aotearoa

5. Social Service Providers Aotearoa (SSPA) is a membership-based national peak body, comprised of over 200 community-based social service organisations from around Aotearoa, based in both rural and urban locations.¹ Among our members are kaupapa Māori and Iwi social service organisations, Pacific providers, region-specific and national social service providers. SSPA members work across the full spectrum of community-based social services with a central focus on supporting the positive outcomes of children, rangatahi, families and whānau.
6. SSPA full members are funded by government to deliver social services in our communities every day, with a predominant focus on children, rangatahi, families and whānau. Our affiliate members are organisations that deliver social services for these people, and organisations and individuals who work in areas aligned to the interests of children, rangatahi, whānau or communities.
7. SSPA's vision is that Aotearoa's community-based social services are sustainable, able to make a positive impact every day in our communities, supporting children, rangatahi and whānau to thrive now and into the future. SSPA works to strengthen Aotearoa's social sector through advocacy and engagement, learning and development, relationships and sector leadership.

¹ Find out more about SSPA at www.sspa.org.nz Our strategic plan 2021-23 can be found at https://www.sspa.org.nz/images/SSPA_Strategic_Plan_2021-23_Final_version_for_web.pdf

SSPA's position on this kaupapa

8. Work to modernise the Charities Act is complex. Our organisation is not an expert on charities law. What we can bring to the kaupapa at hand is a perspective from the community-based social services operational environment. Therefore, our submission is made through this lens.
9. SSPA agrees with leading commentators on charities law that charities innovate and reach into communities in ways that others can't. As a sector peak body for community-based social services, SSPA sees this every day through the mahi of our members. *'Many solutions are needed to the complex and connected challenges Aotearoa New Zealand faces: the housing crisis, the mental health crisis, the climate crisis, inequality and poverty are not challenges that government alone can solve.'*²
10. With this in mind, SSPA's view is that the Bill as it is currently drafted is a missed opportunity to meaningfully embed Te Tiriti o Waitangi at the heart of legislation governing the practice of charities in Aotearoa New Zealand, and to ensure Treaty principles are integrated within charities legislation. This would provide the framework for an effective, sustainable and flourishing charities sector promoting equitable outcomes and supporting the diversity of the sector. It would also support our charities sector to work in fit-for-purpose ways in our bicultural and multicultural country and assist in future-proofing the sector.
11. SSPA also believes that the Bill takes a short-term approach to achieving some piecemeal legislative change, rather than looking holistically to support a thriving and safe charitable sector and the wider society it serves. We are of the view that a more in-depth review of charitable purpose is still needed, to ensure it is fit for purpose for contemporary Aotearoa New Zealand.
12. The following sections present SSPA's views and feedback on the specific areas of the Bill we have identified in the introduction to this submission. Where we have identified areas that we think the Bill should be strengthened, we have, wherever possible, put forward suggested approaches and solutions.

Financial reporting requirements for small charities

13. The current compliance regime is onerous for all and is especially burdensome for many small charitable organisations. The introduction in the Bill of an exemption for very small charities from the External Reporting Board (XRB) reporting standards, and instead a requirement to provide a minimum level of financial information³ is progress welcomed by SSPA.
14. SSPA believes that a streamlined and scaled financial compliance and reporting process will contribute, in part, to the effective operation of smaller charities, with reporting requirements more closely aligned to the level of risk and scale of organisations.
15. Transparency, fairness and accountability in decision-making are vital to the charitable sector's success. So too, transparent, fair and accountable relationships between charities with agencies that work alongside them in the operating context

² Pg 49 of Barker, Sue: Focus on purpose – What Does a World-Leading Framework of Charities Law Look Like? <http://www.nzlii.org/nz/journals/NZLFRRp/2022/3.html>

³ Clause 19 of the Charities Amendment Bill <https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757461.html>

(and key compliance frameworks), such as Te Rātā Atawhai, the Charities Registration Board, the Chief Executive of Te Tari Taiwhenua Department of Internal Affairs, Charities Services, the IRD Tax Policy work programme and XRB financial reporting standards.

16. SSPA believes that the decision-making process to exempt smaller charities will need to be clearly expressed as to how it will work in practice, and with clearly defined terminology for exempted small charities. Combined with support, education and guidance, we envisage that this will contribute to improving compliance reporting rates, and ensure smaller charities can continue their vital contribution to community wellbeing. SSPA encourages engagement with the charitable sector to develop a Te Ao Māori perspective on reporting requirements, guidance and templates that incorporate tikanga Māori practices and principles in the charities law context, to improve equitable outcomes for all organisations across the charitable sector, and therefore the tangata and hapori who they serve through their mahi.
17. Any changes to the process of financial reporting also need to align with requirements under other operative legislation in the charitable sector, such as the Incorporated Societies Act and work by the XRB to amend reporting standards. Many organisations, including SSPA members have additional reporting requirements to funders, to accreditation agencies, and to members or trustees. The combined impact of these uncoordinated requirements places a considerable compliance burden on community organisations. While we do agree that there needs to be appropriate mechanisms of accountability and compliance, unnecessary duplication in the system needs to be removed, to alleviate the burden on organisational capacity and resourcing. There is scope for coordinated efforts across the government agencies involved in reporting requirements to streamline the system. Financial accountability is important as a means of transparency and public confidence. However, we suggest that a streamlined and scaled system would make it easier to report and file financial returns without compromising these requirements.

Decision-making and appeals framework

18. The Bill increases the size of The Charities Registration Board (the Board) from 3 members to 5.⁴ However, there are no further requirements specified in the Bill, despite the stated aim 'to improve the Board's diversity of backgrounds and experience and address potential quorum and conflict of issues.'⁵ For example, the Bill does not outline any requirements regarding the make-up of the membership of the Board, in relation to their background, expertise and skills. This is an opportunity to meaningfully embed Te Tiriti o Waitangi at the heart of any change in the charities sector and governance of the operating environment of charities in Aotearoa New Zealand, and therefore to ensure tangata whenua are represented, together with members that represent the diverse nature of our charitable sector and contemporary Aotearoa New Zealand. We suggest that the Bill is revised to incorporate more specific requirements as to the composition of the Board.
19. We note that the appeals framework prescribed in the Bill includes measures such as extending the appeal timeframe; expanding the power of the Taxation Review Authority to hear appeals in the first instance; requiring publication of registration decision-making by the Board and Charities Services; and requiring Charities

⁴ Clause 5 of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757433.html>

⁵ Pg3 of the explanatory note of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/whole.html#LMS757419>

Services to consult with the sector on significant guidance material. SSPA welcomes these additions. Promoting transparency, accountability and fairness of decision-making is a stated aim of the Bill⁶ and requires shifts in policy, systems and culture. Embedding Te Tiriti o Waitangi and a Te Ao Māori world view specific to contemporary Aotearoa New Zealand is part of this. The charitable sector is diverse, innovative and reflective of the communities they work alongside. SSPA therefore recommends that promoting access to appeal with an Aotearoa New Zealand specific world view, and working with the sector to develop guidance pertaining to charitable practices and processes would be a valuable step forward.

Definition of officer

20. The Bill proposes to extend the definition of ‘officer’ of a registered charity to any person who is “able to exercise significant influence over the management or administration of the entity.”⁷ SSPA is of the opinion that this definition is problematic and should be limited to those governing the charity. This definition could capture staff including the chief executive, and potentially others such as a philanthropic funder, lawyer and cultural advisor.
21. When read together with proposed new section 36C⁸ in which the Charities Registration Board can disqualify an officer of a charity, it is unclear how this will interact with a charity’s employment contracts and employment law obligations, for example for staff (including the chief executive who could be defined as an officer). If the chief executive is banned from being an officer, will their employment with the charity have to be terminated?
22. We note that the Regulatory Impact Statement⁹ on the Bill appears to examine this area from an enforcement view rather than through a governance lens. We suggest that further analysis of the practical implications – and perhaps unintended consequences – of this provision as currently drafted is necessary. We suggest that this should include analysis as to how such a provision would interact with other legislation applicable to the charity sector.

Requirement of one officer to be over 18 years old

23. The Bill proposes that at least one officer of a charity is required to be over 18 years old.¹⁰ In light of the recent decision of the Supreme Court declaring the voting age of 18 inconsistent with the Bill of Rights Act¹¹, and recognising the connections across from this decision to the range of civic spaces in which young people are active participants, SSPA encourages reconsideration of this requirement in the Bill. We

⁶ See Pg3 of the explanatory note of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/whole.html#LMS757419>

⁷ Clause 4 of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757432.html>

⁸ Clause 17 of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757453.html#LMS757451>

⁹ P. 62 of 19 October 2021: Regulatory Impact Statement: Modernising the Charities Act

[https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/\\$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Charities-act/$file/Proactive-Release-Regulatory-Impact-Statement-Modernising-the-Charities-Act.pdf)

¹⁰ Clause 7 of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757436.html>

¹¹ MAKE IT 16 INCORPORATED v ATTORNEY-GENERAL [2022] NZSC 134 [21 November 2022]

<https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-134.pdf>

would like to ensure that any amendments to the Charities Act are consistent with contemporary practice that recognises the active role that young people and rangatahi play as citizens of our country, including the recent Supreme Court decision on the voting age.

Annual review of procedures

24. The proposed new duty for registered charities to review their governance procedures annually¹² creates another layer of compliance burden for charities. SSPA questions whether this legislative change is necessary. We are of the view that it is good practice to review governance procedures and rules documents regularly. However, we encourage the Select Committee to examine the purpose and intent behind the introduction of this new duty in legislation. For example, does it need to be mandated on a yearly basis, and how will it add value and strengthen charities' governance capability?
25. This new duty runs the risk of becoming a cursory tick box exercise when completing annual reporting requirements. Without good processes and guidance developed alongside to scope and define what 'review' means, and how to effectively undertake governance good practice to achieve this, we believe that this requirement will not have a positive impact across the charities sector.

¹² Clause 20 of the Charities Amendment Bill

<https://legislation.govt.nz/bill/government/2022/0169/latest/LMS757464.html>