

Charities Amendment Bill



New Zealand Council Of
Christian Social Services

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Contact Name:	Nikki Hurst Hamish Jarvie
Organisation Name:	New Zealand Council of Christian Social Services (NZCCSS)
Organisation description:	<p>The New Zealand Council of Christian Social Services (NZCCSS) welcomes the opportunity to provide feedback on the Charities Amendment Bill.</p> <p>NZCCSS has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support and the Methodist and Salvation Army Churches.</p> <p>Through this membership, NZCCSS represents over 250 organisations providing a range of social support services across Aotearoa. We believe in working to achieve a just and compassionate society for all, through our commitment to our faith and Te Tiriti o Waitangi. Further details on NZCCSS can be found on our website www.nzccss.org.nz.</p>

Tirohanga Whānui | Overview

We support the kaupapa to bring the laws governing charities into the modern era. We do, however, have reservations surrounding the implications of some segments of this legislation and their possible subsequent regulations. Charities in the current day help individuals and groups with a diverse set of needs and specialisations and run on both large and small budgets. It is important that legislation covers all charities fairly and equitably to ensure that those who need their services receive them.

Our main points are:

1. Requirement to Review Governance Settings

NZCCSS supports yearly reviewing of governance settings, while asking that the requirements of these reviews be simple and that they are clarified within the bill.

2. Officers and the Definition Thereof

More clarity is necessary within the legislation to define an officer in the context of a charity.

3. Charities Registration Board Rights to Disqualify Officers

Charities should be given the option to perform dismissals from officer positions prior to Charities Registration Board intervention.

4. Appeals Process Avenue Change

Charities should be given the option to continue to take cases in the High Court.

5. Clarity around Reporting for Tier 4 Charities

NZCCSS recognises the positive difference that the removal of administration barriers for small charities will make, but we ask for more clarity around who will qualify for this.

6. The Charities Registration Board

NZCCSS supports the increase in Charities Registration Board members, however there are more steps required to ensure adequate representation.

Taunakitanga | Recommendations

1. Requirement to Review Governance Settings

NZCCSS supports yearly reporting, however, questions the extent of what must be reviewed. Where this is in order to comply with cultural and fiscal requirements, a charity which has been compliant until such a point will find a significant review to be unhelpful and time consuming for little to no benefit to the people and communities they support. We request that there be more clarity around what would constitute a review, and guidance as to how this should be conducted, as for many charities this could adequately be addressed in an AGM or similar circumstance.

The legislation would be more easily enforceable and to comply with if it included rules around who must conduct such a review, especially whether it should be conducted internally.

Recommendation One: We recommend that further guidance be afforded to charities as to what must be included in and who must conduct a yearly governance review.

2. Officers and the Definition Thereof:

The legislation as proposed lacks clarity around what constitutes an officer, and in which case an organisation or individual can make an exemption from being such. The Bill has removed a [clause](#) with examples of which positions would constitute an officer of a charity, and thus has made it unclear and up to interpretation.

The ability of 16–17-year-olds to be officers of a charity where there is one or more officer over the age of 18 also appears to be in conflict with the [Trust Act 2019](#), which prohibits those under 18 from being trustees. The Supreme Court ruling that voter discrimination on the basis of age is unconstitutional sets an example that the governance of charities and trusts which directly impact young people should not be based upon this discrimination. Further clarification around the interaction between these two pieces of legislation is necessary for charitable entities to be as inclusive as possible.

Recommendation Two: NZCCSS recommends that the role of officer is further described, positions which qualify are defined, and that related legislation such as the Trust Act 2019 be updated to be age inclusive.

3. Charities Registration Board Rights to Disqualify Officers

NZCCSS recognises that officers who are found to have engaged in improper or illegal conduct must be disqualified from positions of influence. The act of disqualification, however, must sit first and foremost with charitable entities themselves. Where an overseeing body makes such decisions for

charities, there is potential for this to be seen as inaction on the part of charities and to negatively impact their reputation.

While the right of an overseeing body such as the Charity Board to dismiss officers of a charity has merit, NZCCSS believes there must be processes and regulations in place to allow charities themselves to deal with this first. We strongly advocate for a layered approach, with charities retaining the choice to dismiss officers where misconduct has been found and the Charities Board stepping in when this is not carried out correctly.

Where charities are not afforded the opportunity to address concerns of misconduct, there is a concern that this may appear to be inaction on the part of the charity, and it is important that they are seen to take action.

Recommendation Three: NZCCSS recommends that the Charities Board requests the dismissal of an officer, before stepping in to complete this dismissal only where charities fail to do so.

4. Appeals Process Avenue Change

The intention to make public all decisions made through the appeals process sits well with the ethos of openness within the community sector. We believe that no entity is beyond reproach, and that we should all be held to a high standard.

The legislation as written solely allows for High Court access for cases where that Taxation and Charities Regulation Authority deems it appropriate. While we recognise that many litigatory matters could be more adequately addressed through the Taxation Regulation Authority, we believe that the High Court should still be an option for charitable organisations to access as their primary choice.

Recommendation Four: NZCCSS recommends that the High Court remain a primary option for litigation around charitable organisations.

5. Clarity around Reporting for Smaller Charities

Charities, especially those catering to rare and unusual needs, often have a difficult path to becoming financially viable and potentially scale up their operations. For those charitable entities with limited staffing and resources it is important that most of their time and impact is directed at their charitable goals rather than to administration.

NZCCSS recognises the importance of exemptions in financial reporting for smaller charitable entities, as the lifting of administrative burdens will enable the quality and quantity of their services to rise. Despite this recognition of need, we request that more detail be provided as to what constitutes eligibility for reporting exemption.

Recommendation Five: NZCCSS Recommends that further clarity around the definition of an exemption eligible charity be included in legislation.

6. The Charities Registration Board

The legislation proposes an increase of board members on the Charities Registration Board from 3 to 5, with the stated aim [‘to improve the Board’s diversity of backgrounds and experience and address potential quorum and conflict of interest issues.’](#) Despite the stated aim, the increase in Board members is not accompanied by a requirement for representation from any particular groups to

ensure this goal is met. NZCCSS asserts that representation from Mana Whenua is integral to a balanced and Te Tiriti honouring Board, and that a requirement for at least 1 of the new members be Māori be included in the legislation.

Recommendation Six: NZCCSS recommends that a requirement for Tangata Whenua representation on the Charities Registration Board be added to the legislation.