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9 December 2022

Angie Warren-Clark
Chair
Social Services and Community Committee
Parliament Buildings
Wellington

By email: ssc@parliament.govt.nz

Kia Ora Angie,

Charities Amendment Bill 2022

1. Thank you for the opportunity to comment on this Bill – and for extending the time for submissions.
2. Rangitikei District Council deals with a wide variety of charitable organisations, primarily through its own (ratepayer) funding schemes but also through the Creative Communities Scheme. We are extremely conscious of the important contribution such organisations make to our community, and that their survival depends on the loyalty of donors. This means that our perspective is that the Government's role should be facilitative rather than regulatory. We feel that the view in the 'Explanatory note' in the Bill is unbalanced: to state that "the Charities Act aims to promote public trust and confidence in charitable entities and promote the effective use of charitable resource" is to overlook entirely the role of individual and corporate donors. If they lose confidence, they stop donating.
3. An example of overzealous legislative provision is clause 20, inserting a new section 42G which requires a charitable entity to review its governance procedures annually (and to certify that as part of the annual report). We note that this reflects a recommendation from the Department of Internal Affairs Regulatory Impact Statement (page 54), which notes that it was not consulted on during stakeholder engagement. This additional compliance requirement seems unnecessary: Council recommends that it be deleted from the Bill.
4. The Internal Affairs' Regulatory Impact Statement recommends that a subset of small charities with low income and assets should be exempt from meeting the financial reporting standard set by the External Reporting Board, noting that "this would reduce the compliance burden for approximately 3,600 small charities in a way that is proportionate to the lower risk posed by these charities". Council agrees with that objective. However, the threshold behind that calculation is not noted, and clause 19 of the Bill (new clause 42AB) leaves this detail for regulation (on the basis that this provides flexibility to response to amended requirements from the External Reporting Board). The Internal Affairs

Regulatory Impact Statement suggested (page 24) a threshold of annual payments of \$10,000 and total assets under \$30,000, rejecting higher thresholds(annual payment of \$40,000 and total assets of \$50,000)

5. This parallels the definition of ‘small’ society defined in section 103 of the Incorporated Societies Act 2022, this means “a society, if in the previous two years it has total operating payments under \$10,000, total assets under \$30,000 and is not a “donee organisation” for tax purposes.’ We think the ability of charitable organisation to have donee status is one important way in which the Government facilitates charitable organisations. and we oppose the principle of denying that opportunity for small charitable organisations. Council recommends that new section 42AB specifies the thresholds, allows donee status irrespective of the size of a charitable organisation, and not leave the matter for regulation.
6. The Internal Affairs Regulatory Impact Statement notes that there are 28,000 charities (page 9). The Explanatory Statement to the Bill comments that half of the registered charities (so around 14,000 organisations) have annual operating expenditure of less than \$140,000 – further elaborated by the Internal Affairs Regulatory Impact Statement (page 19) that 57% had annual operating payment of less than \$125,000 in 2020, with reporting compliance of around 40%.
7. Council recommends that the Bill specifies the reporting requirements for a wider group of charities to address this medium-size group (i.e. with operating expenditure between \$30,000 and \$140,000). In addition, we suggest that there is closer consideration given to the needs of Māori charitable organisations and whether a different reporting requirement could be developed in consultation with them. (The Internal Affairs Regulatory Impact Statement considered but rejected the idea of an advisory committee to assist with this issue: pages 25 and 27)
8. Council notes that the Internal Affairs Regulatory Impact Statement considered the question of accumulation of funds by the larger charities and rejected the option of requiring such charities to publish a distribution plan, recognising that – while large charities will always be looking ahead, to enforce reporting could compromise “the independence to adjust funding distribution to changes in community demand and other external factors”(page 43). Council agrees with the omission of any such requirement in the Bill.
9. We are disappointed to see the continuation of a split of regulatory responsibilities between Te Rātā Atawhai, the independent Charities Registration Board and the Chief Executive of Te Tari Taiwhenua Department of Internal Affairs. Council understands that this arrangement dates from the abolition of the Charities Commission ten years ago. The Internal Affairs Regulatory Impact Statement does not analyse the effectiveness of this structure, simply noting (page 81) that Te Atawhai “in practice delegates most decisions to Charities Services” (which is a business unit within Internal Affairs), although it does comment that “it is unclear why the decisions under the Charities Act are split between the Chief Executive and the Board” (page 87) but also that ‘any significant structural change

has been ruled out' (page 92) without further explanation. While Council supports the proposal in clause 5 of the Bill to increase the Board's membership from three to five, the Bill is a missed opportunity to address the lack of clarity noted in the Internal Affairs Regulatory Impact Statement.

10. Council notes that clause 7 of the Bill requires at least one officer of a charitable organisation to be at least 18 years or older and accepts that this is proposed to ensure alignment with the requirements of the Companies Act and the Trusts Act. However, we wonder why, for other officers in the charitable organisation there has to be a disqualification for *any* person younger than 16, as is proposed in clause 17, with the new section 36B and question whether Internal Affairs sought advice from the Ministry of Youth Affairs about this. Council recommends that this provision is modified so that the disqualification arises if a majority of officers would be less than 16 years old.
11. We think allowing appeals to be heard by the Taxation Appeals Authority (instead of the High Court) from decisions made by the Board or the Chief Executive of Internal Affairs is the best compromise available without undertaking structural reform. It does provide a faster and less expensive process. To recognise what is an experiment, Council recommends that clause 26 Inserting new Part 2A sections 58A-58X) be specifically subject to review after five years from the Bill's commencement so that there is an opportunity to consider the effectiveness of this option from the perspectives of the Ministry of Justice, Te Atawhai and the Department of Internal Affairs.
12. Council hopes these comments are helpful and we look forward to an amended Bill including our recommendations proceeding through Parliament. I would appreciate the opportunity to talk with the Committee. Please arrange this through Karen Cowper, Executive Officer. Her contact details are (06) 327 0099 or karen.cowper@rangitikei.govt.nz

Ngā mihi



Andy Watson
Mayor of the Rangitikei District