

“Charities Amendment Bill 169-1 (2022)”:

Submission from Hui E! Community Aotearoa

About us – Hui E! Community Aotearoa

1. Hui E! Community Aotearoa is a peak body to champion and tautoko the mahi of more than 115,000 tangata whenua, community and voluntary groups in Aotearoa. This rich, vibrant and complex sector contributes nearly five per cent of the country’s GDP, but organisations often operate with more aroha than money or practical support.
2. With hui, āwhina and kōrero we represent, celebrate and support the sector while acting as a collective voice with government and other funders. We also provide opportunities for community rōpū to network and build greater strength and stability. You can access our latest Annual Impact Report here: <https://bit.ly/3ixNolA>.
3. In writing this joint submission, we bring together the collective experiences and knowledge of our organisation, our formal and informal networks, and our wider sector. This submission reflects our network’s key shared views and concerns about the Charities Amendment Bill. A list of members and organisations endorsing this submission can be found at the end of this document.

Recommendation 1: First Principles Review of the Charities Act 2005 and related legislation

4. According to the Department of Internal Affairs’ (“DIA”) [Modernising the Charities Act: Frequently Asked Questions](#) document, updated 23 September 2022, “A first-principles review is out-of-scope for the current work programme. The fundamentals of the Charities Act (including the registration, reporting and monitoring of charities) are considered to be sound, so a first-principles review was not considered to be necessary by Cabinet in 2018.” ([DIA, 2022](#))
5. However, we still stand by our joint call for a First Principles Review of the Charities Act 2005 and related legislation, one that includes a Te Tiriti o Waitangi statement reaffirming the Crown’s commitment to Te Tiriti o Waitangi signed in 1840. Incorporating te ao Māori principles into the Charities Act should be at the foundation of any work carried out by the public sector, that being a First Principles Review or Practical Improvements to the Charities Act.
6. The review should be carried out by an independent authority or group, such as the New Zealand Law Commission, that will draw on specific expertise and knowledge that relates to the sector and communities it represents. It should avoid any conflicts of interest that may arise by the DIA’s role and responsibilities within the current system. It should not be the Department reviewing itself.

Recommendation 2: Enabling simpler financial reporting from small charities to reduce compliance burden

7. **Section 42AC** - We support this change and emphasise the need for simpler reporting standards for very small charities. We ask that there are clear guidelines and a framework that accompanies this change in relation to eligibility criteria (e.g. how very small charities are defined), transition timeframes for reporting minimum requirements, and clear expectations.
8. We support Te Kāwai Ārahi Pūrongo Mōwaho | External Reporting Board's recommendation on the need for ongoing awareness and educational support for small charities ([XRB, 2019](#)). This will increase reporting compliance, but we emphasise its importance mainly for small charities to better understand their rights and obligations. Education, alongside clear and direct guidelines, are key for compliance, efficiency, and more importantly tools to encourage community groups to deliver their best in a system they understand.
9. The Bill, and the subsequent proposed changes, are not accessible to small and medium charities (the majority of the sector). They are mostly without the capability or capacity to analyse and implement the changes. There have been efforts by DIA to simplify the messaging and language around the document, but they are far from what is needed for genuine and open consultation. Under-represented community groups such as Māori, Pacific, Ethnic, migrant, former refugee background, disability and those digitally excluded are most affected and by default, excluded from this process due to the complexity of the language and delivery of this Bill.
10. The Plain Language Bill marks a significant legislation "to improve the effectiveness and accountability of public service agencies and Crown agents, and to improve the accessibility of certain documents that they make available to the public" ([Parliamentary Counsel Office, 2022](#)). We would like to see this legislation reflected in this Bill and future policy documents relating to the Charitable sector.

Recommendation 3: Improving access to justice for charities in the Appeals process

11. **Clause 26 Part 2A** - We support the decision to introduce the proposed Taxation and Charities Review Authority (TCRA) to reduce costs and allow charities to represent themselves:
 - 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' experience ([DIA, 2021](#)). We ask that the appointed TCRA Court judge or lawyer has a strong background in charities law and experience in the sector specifically, aside from work experience as a practicing judge or lawyer.
12. **Section 58A** - We support the changes made to allow appealable decisions to include all decisions of the Charities Registration Board:
 - We would like the Bill to replace the current recommendation to allow all appealable decisions to include all decisions of the Board **and** the DIA Chief Executive.
 - We would like the Bill to clearly outline and define the scope of "significant decisions" made by the DIA Chief Executive or the Board.

Recommendation 4: Enhancing regulatory decision-making requirements, to further promote transparency and fairness

13. **Section 8(1)** - We support the Bill in increasing the number of members of the Charities Registration Board from 3 to 5 to improve the Board's diversity of background and experience:
- We would like the Bill to introduce requirements and clear guidelines to ensure the level of diversity it intends to achieve. Ensuring that Tangata Whenua are appropriately represented on the Board will be a necessary first step.
14. **Section 12A** - The Bill also requires the DIA Chief Executive to consult persons or organisations that the Chief Executive considers to be representative of the interests of charitable entities before issuing significant guidelines:
- We would like the Bill to require the DIA Chief Executive to consult with representatives of the interests of charitable entities through an **open process**, and to consult with Peak Bodies and other entities that represent various points of view and not those deemed representative by the DIA Chief Executive alone.
15. We support the definition of consultation by CJ McGechan in *Wellington Airport Ltd v Air New Zealand* [1993]:
- *"Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their response and then deciding what will be done"*
 - *Sufficient information provided to the consulted party, so that they can make intelligent and informed decisions*
 - *Sufficient time for both the participation of the consulted party and the consideration of the advice given*
 - *Genuine consideration of that advice, including an open mind and a willingness to change.*

We support and welcome the decision to increase the time for lodging an appeal to 2 months.

Recommendation 5: Clarifying the role of officers and supporting the governance of charities

16. **Clause 4** - The definition and role of officers:
- We ask that the Bill clearly and explicitly defines the roles of officers in the document.
 - We ask that "Cultural Advisor" be removed from the list. We believe including this role could have significant implications that would decrease the crucial cultural shifts needed to transform our communities to be more culturally responsive and diverse.
 - We ask that in the first instance Charities are allowed to review their membership and appoint new officers and clarify their roles. The proposed definition can then be adopted to ensure consistency.
17. **Section 42G** - Charities will be required to review their rules document every year:
- Requiring charities to undertake this process annually will be time consuming and costly for most registered charities. There is limited support and resourcing available for charities to undertake this work. We request the Bill remove this requirement.

- We believe this point and the reporting standards' recommendations are better addressed through education and raising awareness. The benefits of understanding the value of reviewing the rules should be encouraged to allow the sector to deliver to its best ability. This is preferable rather than regulating those who don't have the resources or capacity to comply with the proposed changes.

Recommendation 6: Improving regulatory compliance enforcement tools

18. **Section 36C (1)** - The Bill gives the Charities Registration Board discretion to disqualify an officer at any time if that officer has engaged in serious wrongdoing:

- We believe the responsibility for disqualifying an officer for serious wrongdoing should sit with the charity first and foremost rather than with the Board.
- We suggest that the Board instead recommends to the charity to remove an officer in the first instance. Only in default of this happening would the Board then have power to disqualify an officer.

Conclusion

19. At Hui E! Community Aotearoa and through the collective voice of our network and partners, we see and work with a sector that is essential and vital to Aotearoa's communities leading healthy and equitable lives. We would like to see policy reviews and recommendations with the main purpose of facilitating and encouraging that work rather than regulating it.

20. Education is key in shifting the narrative and facilitating the path for charities to be more compliant to current and future regulations. Education will create a healthier sector. It will also allow more innovative approaches to collaborative funding, fundraising, and resourcing, while continuing to deliver essential services across Aotearoa.

21. Thank you for the opportunity to submit and note our concerns and recommendations. For further comments, please contact Rochelle Stewart-Allen at rochelle@huie.org.nz, Phone 027-36-38-665.

22. We wish to speak to the Select Committee on this submission on behalf of Hui E! Community Aotearoa and our network.

This joint submission is provided by Hui E! Community Aotearoa's formal network, including the following organisations:

- Ara Taiohi
- Auckland North Community and Development
- Big Brothers Big Sisters of North Canterbury | Tuakana Teina
- Budgeting Services North Canterbury
- Community Networks Wellington Inc

- ComVoices
- Deen Welfare Trust
- Dunedin Midwinter Celebrations Trust
- Earth Action Trust
- Education Benevolent Society Incorporated
- Future Whenua
- Gather Foundation
- Good Bitches Trust
- Hinengakau Maatua Whangai Trust
- Hope Worldwide-Pakistan
- Inspiring Communities Trust
- Interpreting New Zealand
- Make-A-Wish New Zealand
- Mangere East Family Service Centre
- Matapuna Hauora | NorthAble Trust
- Multiples NZ
- Network Waitangi Ōtautahi
- New Zealand Council of Christian Social Services
- NZ Navigator Trust
- Parents for Climate Aotearoa
- Porirua Multicultural Council
- Platform Trust | Atamira
- Refugee Support Group
- Renew Communities Trust
- Socialink
- Southern Youth Development
- Taieri Network
- Tairāwhiti Technology Trust
- Te Ahi Wairua o Kaikoura Charitable Trust
- Te Hononga Akoranga COMET
- Te Ora Hou Aotearoa Inc
- Te Ora Hou Ōtautahi Inc
- Te Puru Community Charitable Trust
- Te Wāhi Wāhine o Tāmaki Makaurau | Auckland Women's Centre
- Volunteering Auckland | Ohu Tūao o Tāmaki Makaurau
- Volunteering New Zealand
- Volunteering Waikato | Te Ohu Tūao o Waikato
- Whatunga Tūao | Volunteer Central
- Weed Action Native Habitat Restoration Trust
- Whenua Warrior
- Wildlife Foxton Trust
- YWCA of Hamilton