



Submission to the Social Services and Community Committee on the Charities Amendment Bill 2022

From the Board of Child Cancer Foundation

November 2022

1. Introduction

- 1.1 For over 40 years, Child Cancer Foundation (CCF or the Foundation) has stood by our kaupapa of ensuring that every family going through childhood cancer in New Zealand has someone there to support them at a time when they need it most. Our vision is to walk alongside and support all children and their families on their cancer journey and advance improvements to child cancer care. Each year we support over 1400 families who have experience of child cancer and invest thousands of dollars in research which supports equity of outcome from cancer services. Our members are made up of some of these 1400 families and whānau who have been supported in the past. This submission comes from the Board of the Foundation on behalf of our members and staff.
- 1.2 The Board of CCF would like to thank the Select Committee for the opportunity to provide feedback on the Bill to amend the Charities Act 2005. The Foundation notes that the purpose of the Bill is to up-date and make practical changes to support charities to continue their vital contribution to community well-being. It also aims to ensure that that contribution is sufficiently transparent to interested parties and the public. We also note the alignment between this Bill and the Incorporated Societies Act 2022.
- 1.3 The Board of the Foundation acknowledges the depth and the breadth of the contribution charities make to communities across Aotearoa/New Zealand. As an organisation, we also support transparency to those we serve, our donors and the public at large.
- 1.4 Notwithstanding the points made in 1.2, the Foundation has a number of concerns with the Bill as it stands and wishes to make a number of points for the Select Committee to consider.
- 1.5 We would like to speak to our submission and engage with the Social Services and Community Select Committee (SSCSC) directly on the Bill during the hearings (please see 4.3 for CCF attendees).

2. Recommendations

The following section provides an overview of our recommendations to the Chair and members of the SSCSC. For a broader description of our views please see section three of this submission.

- 2.1 We strongly recommend that the language of the Bill should be changed to support, via the Act, charities to hold funds in reserve that can be prudently invested and used to support the aims and objectives of an organisation;
- 2.2 CCF recommends to the select committee that the Bill be changed to re-establish the independent arm's length commission structure as was in place prior to 1 July 2012, and as is common in other comparable democracies such as the UK and Australia;
- 2.3 CCF recommends to the select committee, the establishment of a Charities Ombudsmen, within the office of *Kaitiaki Mana Tangata/Ombudsman New Zealand* as the first place of appeal rather than the Taxation Review Authority;
- 2.4 We recommend greater clarity in who is defined as an officer and/or indicate an order of precedence in relation to office holders/bearers between the constitution/rules of an organisation and the Bill;
- 2.5 We recommend a board only be required to review its rules/constitution once every election/appointment cycle or three yearly (for those without an appointment cycle) to reduce the compliance burden and align with the election/appointment of new Director's process of an organisation; and finally
- 2.6 CCF recommends inclusion in the Bill of a section similar to that set out in Part 8 of the Companies Act 1993; which defines directors and their powers and duties to provide improved clarity of roles and responsibilities and enhances the role of Director more broadly than that defined in the Bill.

3. CCF Feedback on the Bill

- 3.1 While the Foundation is broadly supportive of changes to the Charities Act 2005, we believe the current Bill, as it stands, does not address the purported purpose of the proposed changes, which as stated in the Bill is to:
 - I. Make practical changes to support charities to continue their vital contribution to community well-being; and
 - II. Aims to ensure that this contribution is sufficiently transparent to interested parties and the public.

As such, the Bill as written is a lost opportunity to make significant and valuable changes to the sector and appears to focus on financial transparency at the expense of supporting charities in their mission's. As such there seems to be an overt focus on the financial side of charities which will make the overall Act transactional rather than a piece of legislation that supports a flourishing civil society with engagement by all segments of the community. We therefore make the following observations and recommendations, in good faith.

- 3.2 Of greatest concern to the Foundation is the ability to prudently manage and invest funds to support the mission of the organisation into the future. We strongly recommend that the language of the Bill should be changed to support, via the Act, charities to hold funds in reserve that can be prudently invested and used to support the aims and objectives of an organisation as set out in their Rules or Constitution documents. Many charities, including CCF, receive funds from donors including bequests, with a specific view towards supporting activities over many years or for investment (somewhat akin to universities and endowment funds).

Certainly in the case of bequests or large donations the donors want their contribution 'to live on' beyond the general daily operations of an organisation, this requires careful investment and ongoing stewardship of these funds to maximise the benefits to both the donor and the organisation. This aids sustainability within the sector and if not accommodated may have the effect of charities not receiving particular types of donations and/or 'short termism' in terms of governance and management risking the viability of the charity sector or services therein. Annual funding is never enough to cover the needs that the charity sector is servicing and to limit the diligent investment of bequest and major donations / gifts could have a very detrimental impact and act as a disincentive to good prudent financial management.

- 3.3 The Foundation believes that the review of the Bill is a lost opportunity to re-imagine an Independent Charities Commission which not only acts as a regulator but also provides a unified voice which advocates for and provides protections to civil society.

It is our view that an 'office' housed within a government department can only act as a regulator. We therefore support the return to an Independent Commission at arm's length from government that provides not only regulation but also acts as a bridge between civil society and government.

Furthermore, one of the stated aims of the Bill is to improve transparency. It is therefore not without irony that the present arrangement of an office within a government department lacks a degree of transparency in both its decision making and regulation. We therefore recommend to the select committee that the Bill be changed to re-establish the independent arm's length commission structure.

- 3.4 We note that one of the stated aims of the Bill is improving access to justice for charities in the appeals process. The mechanism proposed is the Taxation Review Authority the Explanatory Note discusses 'how the Authority is the most appropriate existing tribunal to hear these appeals owing to the historical connection between tax and charities law'. While we support improving access to justice, we reject the notion that the key fundamental driver should be a perceived 'connection between tax and charities law', which after all is one administrative by-product of a larger purpose and mission. We therefore recommend to the select committee the establishment of a Charities Ombudsmen, within the office of *Kaitiaki Mana Tangata/ Ombudsman New Zealand*, to take into account the wider purpose of civil society organisations.

- 3.5 Under the Bill, it sets out the role of an officer which includes assisting the charity to: (a) deliver its charitable purposes; and (b) comply with its obligations under the Charities Act 2005 (the "Act") or any other enactment. The Bill also expands the definition of officer to include a person who is 'able to exercise significant influence over the management or administration of the entity, along with trustees and members of the governing body'.

This expanded definition aligns with the definition of officer in the Incorporated Societies Act 2022. This suggests that irrespective of an organisation's constitution/rules, which may define Officers more narrowly, for example limiting officers to the Chair and Deputy Chair, under this expanded definition, 'Officers' may include specific members of a charity's board and the CEO at the very least, and the whole board and executive team in an expanded interpretation.

Rather than providing clarity, the Bill confuses whom should be classified as an Officer. We therefore recommend greater clarity in who is defined as an Officer and/or indicate an order of precedence between the constitution/rules of an organisation and the Bill,

for example 'an officer shall be defined as the Chair, deputy Chair and Board unless otherwise stated in an organisation's constitution'. We therefore suggest that the appropriate order of precedence be the organisations constitution or rules reverting to the Act if this is not stated within the rules or constitution.

- 3.6 The Bill, if passed as is, would require that a board must review their rules/constitution every year and confirm this in its return to the Charities Office. If a board failed to do this two years in a row they would be deregistered.

CFF believes this is excessive, and it is not clear what the purpose behind this is aside from adding compliance costs to charities. We would therefore recommend a board only be required to review its rules/constitution once every election/appointment cycle. In the case of CCF, for example, this would be once every three years.

While on the surface this may not appear to be a large issue in and of itself, alongside the new Statement of Service Performance (SSP), reporting requirements, financial reporting and other duties required of a board it adds to the compliance burden of charities and takes up valuable board time which is often precious due to the volunteer nature of many charitable boards, irrespective of charity size.

- 3.7 The Foundation supports the qualification requirements for appointment as an Officer as set out under sections 31(4), 36B, and 36C of the Bill. However, we believe that limiting the duties of officers to (a) deliver its charitable purposes; and (b) comply with its obligations under the Charities Act 2005 (the "Act") or any other enactment creates (albeit unconsciously) a regime which provides disincentives for boards to act in a manner which supports the long-term ongoing operation of a charitable organisation.

The changes made to the reporting standards of April 2015 and those proposed in the Bill, notably for example, requirements around accumulated funds vs. reserves, surpluses and assets and the associated requirements could lead to 'short-termism' rather than a more well-rounded approach to the operation of a charity. Therefore, we recommend inclusion in the Bill of a section similar to that set out in Part 8 of the Companies Act 1993; Directors and their powers and duties.

Not only would this provide a more balanced and well-rounded approach to governance but would also provide clearer role responsibility and guidance to new board members, many of whom are volunteers, new to governance and not fully cognisant of the duties of directors but have passion and an affinity to the work of particular charities.

4. Concluding Comments

- 4.1 We believe the opportunity to review the Act and provide feedback on the Bill is a once-in-a-generation opportunity. As such, we would like to see greater ambition and proposals that support the work of civil society organisations. A reductionist view such as the one taken which uses a lens of taxation and regulation is not only limiting the potential of the charity sector, but also limits democracy (in its broadest sense), and diminishes the ability for communities and individuals to participate.

- 4.2 We believe the recommendations we have made provide a framework for an Act that supports and grows civil society and the charities that work within it. A strong civil society is one where communities participate and where democracies flourish. While equity in taxation policy and transparency are critically important, they should not be the only defining factors in the fundamental framework legislation which supports the charities sector.

- 4.3 We look forward to a more robust, broader Bill being reported back. As noted above we would like to speak to our submission. Our Patron Mr Jim Boulton ONZM, and CEO Ms Monica Briggs would attend the SSCSC to discuss in greater detail our perspectives and address any questions the Committee may have with regard to the recommendations contained herein.
- 4.4 We thank the Committee for the submission extension, the opportunity to submit and the future opportunity to present our submission in person to the committee.