Charities Amendment Bill

Government Bill

As reported from the Government Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Charities Amendment Bill and recommends that it be passed with the amendments shown.

How the Charities Amendment Bill came about

The four clauses of the Charities Amendment Bill originally formed Part 3 of the Statutes Amendment Bill. Amendments made by statutes amendment bills should be minor, technical, and non-controversial changes to existing legislation.

During our consideration of the Statutes Amendment Bill, a late submission was raised with us about one of the proposed amendments to the Charities Act 2005. To give the public a further opportunity to make submissions, we resolved to divide the Statutes Amendment Bill, so that Part 3 became the separate Charities Amendment Bill.

The Charities Amendment Bill seeks to amend the Act in the following ways:

- to provide that a person cannot be an officer of a charitable entity if they have been convicted of a tax evasion or similar offence under the Tax Administration Act 1994
- to provide that an application for registration as a charitable entity can be treated as withdrawn if an applicant does not respond to a request for information or other notice from the chief executive under section 18 within the required timeframe
- to correct a 2012 drafting error by removing the words “or the chief executive”.

Regulation of charitable entities under the Charities Act 2005

The Charities Act 2005 established the Charities Commission as an autonomous Crown entity. The Charities Commission was responsible for the registration of charitable entities and ensuring their compliance with the Act.

When the commission was disestablished in 2012, its functions were transferred to an independent Charities Registration Board within the Department of Internal Affairs, and to the chief executive of the Department of Internal Affairs.

The Charities Registration Board has sole statutory responsibility for the registration and deregistration of charities, and publication of notices of serious wrongdoing or a breach of certain provisions in the Charities Act 2005.

The Department of Internal Affairs (Charities Services) is responsible for the day-to-day administration of the Act, and providing support and secretariat services to the Board.

Amendment to replace "chief executive" with "Board"

We recommend inserting clause 12A to correct a drafting error (which arose from amendments made in 2012) in section 60(3) of the Act, by replacing "chief executive" with "Board". Section 60(3) refers to the exercise of power by the chief executive under section 55. However, the chief executive does not have any statutory decision-making power under section 55. The Board has the power to publish details of a breach of the Act or serious wrongdoing under section 55.

Effect of removing "or the chief executive" from section 61(1)(a)

Due to community concern, clause 13 of the bill as introduced did not get our unanimous support, as required for legislation under statutes amendment bills. It is, therefore, struck from the Charities Amendment Bill.

Clause 13 of the bill as introduced is similar to the amendment we recommend above. In this case the amendment would remove the words "or the chief executive" from section 61(1)(a) of the Act. We were advised that the drafting error was in section 61(1)(a), not section 59.

We were also advised that the 2012 amendments did not alter charities' substantive rights of appeal.

Despite this, most submitters expressed a concern that removing the words "or the chief executive" from section 61(1)(a) would remove charities' right of appeal against decisions of the chief executive. However, we were advised that section 61 does not confer a right of appeal; it simply sets out the types of order the High Court can make in determining an appeal. Consequently, the amendment would have no impact on charities' rights of appeal. We also were advised that section 61(6) of the Act specifically preserves the right of any person to apply for judicial review.

We were advised that it would not be appropriate to resolve the inconsistency between sections 59 and 61(1)(a) by amending section 59 as some submitters suggest. We heard evidence that conferring a statutory right of appeal against steps taken by the chief executive (of the Department of Internal Affairs) in administering the Act could have significant unintended consequences for charities’ access to justice.

Appendix

Committee process

The Statutes Amendment Bill, from which this bill was divided, was referred to the committee on 9 December 2015. On 15 June 2016 we separated Part 3 of the Statutes Amendment Bill, which became the Charities Amendment Bill.

We invited submissions on the Charities Amendment Bill, with a closing date of 29 July 2016. We received 33 submissions from organisations and individuals, and heard from seven submitters. We received advice from the Department of Internal Affairs.

Committee membership

Hon Ruth Dyson (Chairperson)

Kris Faafoi

Paul Foster-Bell

Brett Hudson

Mojo Mathers

Mark Mitchell

Poto Williams replaced Kris Faafoi for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted~~

Hon Jo Goodhew

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Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Charities Amendment Act **2016**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

. . . . .

10 Principal Act

This **Act** amends the Charities Act 2005 (the **principal Act**).

11 Section 16 amended (Qualifications of officers of charitable entities)

Replace section 16(2)(c) with:

(c) an individual who, or a body corporate that, has been convicted of either of the following and has been sentenced for the offence within the last 7 years:

(i) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961):

(ii) an offence under section 143B of the Tax Administration Act 1994~~.~~:

12 Section 18 amended (Chief executive to consider application)

(1) In section 18(2), after "documentation", insert "within 20 working days after the date of the request".

(2) In section 18(3)(c)(ii), replace "a reasonable opportunity" with "20 working days after the date of that notice".

(3) After section 18(3), insert:

(3A) An application is to be treated as withdrawn if an applicant fails to adequately respond to a request under subsection (2) or to make submissions to the chief executive on a matter in a notice given under subsection (3)(c) within—

(a) 20 working days after the date of the request or notice; or

(b) a longer period that the chief executive allows at the request of the applicant.

12A Section 60 amended (High Court may make interim order pending determination of appeal)

In section 60(3), replace "chief executive" with "Board".

~~**13 Section 61 amended (Determination of appeal)**~~

~~In section 61(1)(a), delete "or the chief executive".~~

. . . . .

Legislative history

15 June 2016	Divided from Statutes Amendment Bill (Bill 71–1) by Government Administration Committee as Bill 71–2B

Wellington, New Zealand:

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