21 February 2012

Community Waitakere Submission:

Crown Entities Reform Bill 332-1 (2011)

Part 3: Charities Act 2005

This submission from Community Waitakere supports the submission of the Association of Non-Governmental Organisations of Aotearoa (ANGOA), dated 10 February 2012. It is also informed by the response of community organisations at a workshop held in August 2011, facilitated by Community Waitakere and led by ANGOA. This workshop outlined the merger of the Charities Commission with the Department of Internal Affairs (DIA), proposed by the Government, and gave a background to the original establishment of the Charities Commission, including the requirement for review under the original Charities Act 2005.

The proposed merger was only brought to the attention of Non-governmental and community organisations due to the quick actions and advocacy of ANGOA. Without such advocacy, legislation resulting in far-reaching changes to the very environmental of charitable organisations and the vital functions that they perform, may have passed without adequate consultation and consideration of the consequences.

It is on this basis that Community Waitakere fully support the points raised within the ANGOA submission, in particular that the Charities Commission should not be absorbed into the DIA and that a proper review, as required under the 2005 Act, be brought forward and no decisions on the Commission be undertaken until the results of the review have been subject to a full and proper consultation process.

Community Waitakere further supports the following points raised by ANGOA within their submission;

- To axe the Commission now would be 'throwing the baby out with the bathwater'. Some things the Commission is doing are problematic, but **the overall concept is sound**. Dealing with the issues would make more sense than scrapping the whole thing.

- In this sector, there is significant **goodwill** towards the Commission and about many aspects of what the Commission is doing.

- Particularly valued is the **independence** of the Commission. This was fundamental to the agreement between this sector and Government when the decision was made to proceed with establishment of the Commission.

- The **education role** of the Commission was slow to begin but is developing very well and is highly valued. This is the only well-resourced mechanism available for ongoing upskilling of the volunteers that are responsible for both governance and financial management in the thousands of small organisations that are the lifeblood of New Zealand communities. The Commission plays a **preventive role**, reducing the risks of community-based initiatives going wrong, however inadvertently.

- If Government does decide to axe the Commission, **the education budget must be retained** and reallocated as a dedicated fund through a single agency, utilised according to a national strategy based on Section 10(1), clauses (a) to (c) of the 2005 Act.

- There needs to be an ability for organisations to seek an **independent review** of Commission decisions without resorting to the High Court, where the imbalance of resources between the Commission and a community organisation makes justice and resolution of issues unattainable.

- The complexity of the issues seems to lead the Courts to tend to 'go along with the expert body' (i.e. the Commission). Whether this is true or not, there is a growing impression that **fair review** of Commission decisions is not attainable. This is not helpful for the court system the government, or the charitable sector.

- It is hard to see how the **essential autonomy and independence** of the Charities Commission could be maintained if it was absorbed into DIA. Already successive restructurings of DIA have led to significant loss of expertise and relationships in working with this sector, at a time when government claims to want to improve the relationship.

- Issue of advocacy:
    - We need to move away from prescriptive 'black letter' interpretations.
    - It's not desirable or even possible to nail down a prescriptive definition – experience shows this makes matters worse.
    - There is potential for getting the legislation wrong again.
    - Preferable would be making the law **less prescriptive**.

- Similarly, seeking to better define a **primary and ancillary purpose** may not be productive in the long term.

- The guide for decisions should be **public benefit**. Where do the benefits of an organisation's activity fall? This is far more helpful to the development of a successful and resilient society than the current subjective assessment of whether an organisation is doing too much advocacy.

- The oft-quoted claim that allowing more advocacy would enable a political party to register as a charity is a nonsense. Advocacy by genuine charities is aimed at helping government do its job better, so as to benefit the public or a vulnerable segment of the public, while remaining an **independent voice**. By contrast, the purpose of political parties is to become the government.

- There needs to be a commitment to regular reviews – 5-yearly is appropriate – and the reviews should keep in mind the long term agenda: Is the legislation and is the Commission **supporting and maximising the good that accrues to communities from charitable activity**?

- Long term changes that are happening in the Sector – as new models evolve. These may not fit within a traditional 'charity' framework but the **legislation should enable** these developments, so long as their goal is public benefit.

- There was hope when the Charities Commission legislation was being developed that it would be a "**Guardian**" – someone resourced to uphold the principle of what a charity is, supportive of community-based efforts and initiatives, standing up for the sector when there is unjustified criticism, politically-motivated attack, or ill-informed comment in the media. The UK Charities Commission takes on this role, with the Commissioner appearing on television regularly.

- By contrast the New Zealand Commission;

- is overly preoccupied with the register and the registration process
- has been slow to implement the education role set out in its legislation, even though in the longer term it is a more constructive way to address risks in the sector
- describes it's role as 'policing' the sector – a term that is not in its Act, nor is it what the sector and the New Zealand public need at this time.

Community Waitakere would welcome the opportunity for discussion with Government on their support of ANGOA's submission and the organisation urges Government not to make any hasty decision without consideration of the points and a full review being undertaken.

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