



**METHODIST  
ALLIANCE**  
NGA PURAPURA WETERIANA

**Submission to the Social Services &  
Community Committee  
on the  
Charities Amendment Bill  
9 December 2022**



## **A. Ko wai tātou | Who we are**

The Methodist Alliance is a formal alliance of Methodist Missions, parishes and community based social services and trusts, including cooperating ventures. Our organisation constitutes a major provider of a range of services for tamariki/children, rangatahi/young people, and their families/whānau.

The Methodist Alliance brings together a number of large and medium social service providers such as Lifewise in Auckland, Methodist City Acton in Hamilton, Palmerston North Methodist Social Services, Wesley Community Action in Wellington, Christchurch Methodist Mission, Methodist Mission Southern in Dunedin, as well as local community services provided by individual Methodist parishes. It includes new social service organisations, for example: Siaola Vahefonia Tongan Methodist Mission; Puna’Oa - the Samoan Methodist Mission that operates within the Samoan Synod of the Methodist Church; and Te Taha Māori.

Ka whakahōnore mātou i tō mātou whakahoatanga Tiriti – we honour our Tiriti partnership. Te Tiriti o Waitangi is the covenant establishing our nation on the basis of a power-sharing relationship. It is the foundation for social, economic and political equality in Aotearoa New Zealand.

The Methodist Alliance is grounded in our commitment to Te Tiriti o Waitangi and the bi-cultural journey of the Methodist Church of New Zealand - Te Hāhi Weteriana o Aotearoa, where Te Taha Māori and Tauīwi work in partnership. We claim the right bestowed by Article Four of Te Tiriti o Waitangi:

“E mea ana te Kawana ko nga whakapono katoa o Ingarangi, o nga Weteriana, o Roma, me te ritenga Māori hoki e tiakina ngatahitia e ia.”

“The Governor says the several faiths of England, of the Wesleyans, of Rome, and also the Māori custom shall alike be protected by him.”

The Methodist Alliance and our member organisations work collaboratively to achieve our vision of a just and inclusive society in which all people flourish, through our commitment to our faith and Te Tiriti o Waitangi.

## **B. Tirohanga Whānui | Overview**

The Methodist Alliance supports the kaupapa of modernising the laws relating to charities. We would prefer a first principles independent review as promised by the Labour government in 2017.

We consider the legislation as drafted requires some fine tuning to best fit the wide range of small, medium and large charities that have varied structures, and purposes.

We suggest recommendations for the Select Committee to consider to refine this draft legislation.

## C. Tūtohutanga | Recommendations

### First Principles Review of the Charities Act

The Methodist Alliance is disappointed that this Bill appears to breach the promise made in the Labour Party Manifesto 2017 where it promised to:

**“Prioritise the long-promised review of the Charities Act that National abandoned, beginning with a first principles review of the legislation, including examining, updating and widening rather than narrowing the definition of charitable purposes.”<sup>1</sup>**

This Bill continues the trend of imposing further compliance on the charitable sector. The more time spent on compliance means less time charities can spend on their core business –helping our communities. A strong, supported charitable sector strengthens local communities and advocates for social justice. When support and social justice is undertaken at a local community level, the wellbeing of all New Zealand is strengthened.

We **recommend** the Bill is put on hold, while an independent first principles review of the Charities Act is undertaken.

### Definition and role of an “officer”

The proposed new section 4(1) definition of **officer** does not include the clarification provided in the current legislation which provides the example of a treasurer or a chief executive would be a person that would meet the definition of an officer, as they occupy a “position that allows them to exercise significant influence over the management or administration of the entity.” The proposed legislation remains open to interpretation of what positions will qualify to be an officer.

The proposed new section 36A does not provide this clarification and seems to extend the role of an officer to include anyone within the entity who assists it to deliver its charitable purpose. This could include all kaimahi that work for the charitable entity.

We **recommend** that the definition and role of an officer is clarified with positions that qualify defined in the new legislation.

### Age of Officers

The explanatory note states that the Bill requires at least one officer of a charity to be 18 years or over and goes on to state that this change will “create legislative consistency with comparable legislation such as the Companies Act 1993 and the Trusts Act 2019.” Both these Acts, however, disqualify persons under the age of 18 years from being a director or trustee, respectively.

Section 7 of this Bill amends section 13 (1) (d) by requiring at least one officer to be 18 years or older. We seek clarification as to whether section 7 of this Bill which requires a registered charity

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<sup>1</sup> New Zealand Labour Party Manifesto 2017 on Community & Voluntary Sector, p5.

to have at least one officer aged over 18 years overrides the statutory provisions in the Companies and Trusts Acts which prohibit 16 and 17 year olds being directors of a company or trustees of a trust respectively.<sup>2</sup>

We note that the Incorporated Societies Act 2022 specifically allows officers to be over the age of 16 years for incorporated societies.

It would be useful if legislation was consistent relating to the age of officers. At present organisations that wish young people to have the opportunity to be involved in and learn about governance in a supported scaffolded way, have to choose a structure that allows officers under the age of 16 years to hold governance positions.

The recent Supreme Court judgment that held that the current law preventing 16 and 17 years olds from voting was inconsistent with the New Zealand Bill of Rights may also impact on this proposed legislation.

We **recommend** that further work is done to align the age of officers with other legislation and the Supreme Court ruling to provide consistency and clarity.

### **Qualifications of officers**

We **support** the change made to disqualify people with a conviction relating to the financing of terrorism from holding an officer role in a charity in the proposed new section 36B(h).

### **Charity Board Rights to Disqualify Officers**

We agree with the power given to the Board in section 36C to disqualify an officer, though we strongly believe that the Board should first notify the entity's governing body (if that is not the Board) about a concern that may lead to the disqualification of the officer.

The governing body may be unaware of improper or illegal conduct by one of its officers, but should still retain the power to manage this situation. If the overseeing body takes this decision for charities, this could potentially be seen as inaction, or mismanagement on the part of the charity and negatively impact their reputation within the sector.

We strongly **recommend** a structured approach, with charitable entities retaining the power to dismiss officers where misconduct has been proven, and then the Charities Board stepping in if this is not carried out within a reasonable timeframe.

### **Chief Executive's Duty to Consult**

Section 6 of the Bill proposes to insert a new section 12A requiring the Chief Executive to consult with "persons or organisations that the chief executive considers to be representative of the

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<sup>2</sup> Section 96 (2) (a) Trusts Act 2019 specifically precludes individuals under 18 years from being a trustee of a trust, and s151 (2) (a) of the Companies Act 1993 also specifically precludes a person who is under the age of 18 years being a director of a company.

interests of charitable entities” before issuing “significant guidelines or recommendations on best practice to be observed by charities and persons concerned with the management or administration of charities.”

One of the primary purposes of the Charities Act is to promote public trust and confidence in the charitable sector. Therefore, we **recommend** that this duty to consult is extended to include consultation with the public before issuing guidance.

### **New obligations on charities**

The explanatory note to the Bill states that the Bill does not introduce new obligations. This is clearly not accurate, as the proposed obligation imposed by section 42G is a new obligation requiring charities to review their governance procedures annually.

We seek clarity as to how the annual review of rules documents and governance procedures will operate under this Bill. We are concerned that this proposed annual requirement, may become a mere tick box exercise and not achieve the stated purpose of ensuring that a charity’s rules and governance procedures actually reflect the charities current practice, and consideration of whether the charity’s resources are being used to meet their charitable purposes. Making this an annual requirement is a significant increase in administration and compliance for charities.

None-the-less, we believe that reviewing governance procedures and rules is a useful exercise for a charity to undertake regularly, to ensure it is complying with its trust deed/rules/founding documents and governance procedures. If charities make an in-depth review of their rules and governance procedures every five years, it would be much more meaningful and more likely to be a more useful exercise and produce the desired outcome for charities to be more accountable both internally and externally.

We therefore **recommend** that section 42G is changed to require charities to review their governance procedures every five years, as a minimum requirement.

### **Financial Reporting Requirements**

The Methodist Alliance **supports** the proposed changes to exempt very small charities from the reporting standards, though we have concerns about how this will work in practice.

We note this is not a blanket exemption, but is a discretionary power of the Chief Executive to exempt very small charities from the reporting standards. The financial threshold that defines this exemption is not known as it is to be set by regulations. The explanatory note to the Bill states that an annual return outlining minimum information will still be required to be submitted to the Chief Executive. The Bill defines minimum financial information in s 42AB(1) as including information such as income, expenditure, assets, liabilities, mortgages, charges, other security interests, related party transactions and donations. This appears to be very similar to what is

required under the tier 4 reporting standards. Therefore, it appears to provide very little practical reduction in reporting requirements for small charities.

We note the advice from the Department of Internal Affairs that the subset of tier 4 charities that should be exempt are those with annual payments under \$10,000 and total assets under \$30,000. These levels are very low and we believe the threshold should be set at a higher level. As charities that are exempt will still have to provide financial statements and annual returns, the levels of transparency and accountability to the public and Charities Services will still be met.

We **recommend** that the exemption threshold for reducing reporting requirements for charities is set at a total operating expenditure of less than \$100,000 and the exempt charities are limited to reporting on income, expenditure, assets, liabilities and related party transactions only.

### **Appeals Framework**

We also **support** the extension of time to lodge objections from 20 working days to two months.

We **support** the increase in time for the entity or officer to lodge an appeal against the final decision of the Authority to two months.

The explanatory note to the Bill states that the Bill “expands the range of appealable decisions to include some decisions of the chief executive as well as all decisions of the Board.” In reality the proposed Bill limits charities’ rights to appeal to four decisions made by the Chief Executive as set out in section 58A(1). Section 61(a) of the Charities Act clearly states that the High Court may confirm, modify, or reverse the decision of the Board or the chief executive, or any part of it. Therefore the claimed expansion of rights of appeals is clearly false. Therefore, we strongly **recommend** that the proposed new sections 55A, 58A and 58N(2) are amended to make it clear that charities may continue to appeal **all** decisions made under the Charities Act.

There is a lack of consistency with the time frames for appeals. The time frame to appeal a decision of the Authority to the High Court is 20 working days, while all the other appeal time frames are two months. We **recommend** that the time frame in section 58W(2) is also extended to two months.

In our original submission on the Charities Act Review we **recommended** the establishment of a specialist and independent Charities Tribunal to hear appeals of decisions made by Charities Services. We submitted this would provide a low cost, accessible, and independent appeal authority as an alternative to the High Court, and it could hear oral submissions as well as receive supporting evidence. We reiterate our **recommendation** to establish a specialist and independent Charities Tribunal to hear appeals.

We seek further clarification of procedures of how the newly named Taxation and Charities Review Authority will hear appeals, as these are to be further prescribed by regulations, as per

section 58G(2). This means there is a good deal of uncertainty about how this appeal tribunal will function in regards to evidence and procedure.

Section 58A of the Bill removes charities' ability to appeal to the High Court. Charities are limited to appeal to the Taxation and Charities Review Authority only. This means that if a charity applies for a judicial review as well as an appeal, it will have to file two separate sets of proceedings in two separate courts. This will significantly increase the cost and complexity for the appellant charity. We note that section 58X(1)(b) gives the Taxation and Charities Review Authority the power to determine that the case should be heard in the High Court, but this additional step will add unnecessary delay, uncertainty and cost for the appellant charity. Currently, those wanting to challenge a decision made by the Inland Revenue Department have the option of commencing proceedings in either the Taxation Review Authority or the High Court. This Bill does not provide this option for charities, which seems patently unjust.

Greater consideration must be given to the implications of this proposed limitation on charities to appeal to the Taxation and Charities Review Authority at first instance, as generally, only two appeals are permitted. If a charity is required to first appeal to the Taxation and Charities Review Authority, then the High Court, and then the Court of Appeal, it is unlikely the appellant charity would be granted leave to have a third appeal to the Supreme Court.

Therefore, in the interests of justice and equity, we strongly **recommend** that the Bill is amended to provide for charities to commence proceedings in the High Court as of right.

### **Unnecessary legislation**

We seek further clarification of the need for the proposed new sections 13A (1) and (2) (a) - (c). The current section 13 of the Charities Act already sets out the requirements for registration of a charity. It is clear that these essential requirements must be met and continue to be met to ensure the charity remains qualified for registration.

While it may be useful to amend section 13 to include a requirement to have and maintain rules, as in the proposed new section 13A (2) (d), the rest of this proposed new section is unnecessary.

We **recommend** that s 8 inserting a new section 13A is replaced with an amendment inserting "Section 13A (1) To remain qualified for registration, a charitable entity must have and maintain rules."

### **Te Rātā Atawhai - the Charities Registration Board**

We **support** the increase in the number of Board members from three to five on Te Rātā Atawhai, the Charities Registration Board, if this improves the diversity of the board. We are, however, concerned that the Board is not sufficiently distanced from Charities Services to provide a true independent check on decision making. A truly independent body that is sufficiently distanced from Charities Services is needed to provide a robust and autonomous check on decision making.

Currently Te Rātā Atawhai only deals with the more complex issues and in practice, most decisions are made by Charities Services, as stated on the Charities Services website.<sup>3</sup> As Charities Services is part of the Department of Internal Affairs, most decisions relating to charities are not made by an entity independent of the Crown.

We therefore **recommend** that an independent Crown agency is established to ensure an independent check is made on decision-making regarding charities.

#### **D. Whakarāpopototanga o ngā tūtohutanga | Summary of recommendations**

We recommend the following:

1. The proposed Bill is put on hold, while an independent first principles review of the Charities Act is undertaken.
2. The definition and role of an officer is clarified with positions that qualify defined in the new legislation.
3. Further work is done to align the age of officers with other legislation and the Supreme Court ruling to provide consistency and clarity.
4. A structured approach with charities retaining their power to dismiss an officer for misconduct and the Charities Board stepping in to dismiss and disqualify an officer where a charity has not carried this out within a reasonable timeframe.
5. The Chief Executive's duty to consult is extended to include consultation with the public before issuing guidance.
6. Section 42G is changed to require charities to review their governance procedures every five years, as a minimum requirement.
7. The exemption threshold for reducing reporting requirements for charities is set at a total operating expenditure of less than \$100,000 and the exempt charities are limited to reporting on income, expenditure, assets, liabilities and related party transactions only.
8. The proposed new sections 55A, 58A and 58N(2) are amended to make it clear that charities may continue to appeal **all** decisions made under the Charities Act.
9. The time frame in section 58W(2) is extended to two months to align with the other timeframes for appeals.
10. The Bill is amended to provide for charities to commence proceedings in the High Court as of right.

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<sup>3</sup> <https://www.charities.govt.nz/about-charities-services/charities-registration-board/>





11. Section 8 inserting a new section 13A is replaced with an amendment inserting “Section 13A (1) To remain qualified for registration, a charitable entity must have and maintain rules.”
12. An independent Crown agency is established to ensure robust autonomous checks are made on decision-making regarding charities.

The Methodist Alliance does not wish to appear in support of this submission. However, we are willing to meet with the Committee or officials advising it if the Committee considers that would be of assistance.

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