

House of Representatives

Supplementary Order Paper

Tuesday, 12 April 2005

Charities Bill

Proposed amendments

Hon Judith Tizard, in Committee, to move the following amendments:

Clause 2

To omit *subclause (1)* (lines 5 to 8 on page 4), and substitute the following subclauses:

- (1) **Section 1, this section, and sections 11(4), 55, and 139** come into force on the day after the date on which this Act receives the Royal assent.
- (1A) **Part 1 (except section 11(4)), sections 70, 71, and 141, and Schedule 4** come into force on 1 July 2005.

Clause 3

To omit *paragraph (a)* (lines 18 to 21 on page 4), and substitute the following paragraph:

- (a) establish the Commission as a Crown entity for the purposes of section 7 of the Crown Entities Act 2004:

Clause 4

To omit the definitions of **board** (lines 12 to 14 on page 5), **borrow** (lines 15 to 29 on page 5), **chairperson** (line 30 on page 5), **committee** (lines 3 and 4 on page 6), **committee member** (line 5 on page 6), **debt security** (lines 6 and 7 on page 6), **defamatory** (lines 8 and 9 on page 6), **deputy chairperson** (lines 10 and 11 on page 6), **employee** (lines 14 to 18 on page 6), **equity security** (lines 28 and 29 on page 6), **fees framework** (line 30 on page 6 to line 2 on page 7), **interested or interests** (lines 5 and 6 on page 7), **member** (line 7 on page 7), **natural person act** (line 12 on page 7), **public security** (lines 1 and 2 on page 8), **registered bank** (lines 5 and 6 on page 8), and **security** (lines 21 to 23 on page 8).

To omit the definition of **officer** (lines 27 to 31 on page 7), and substitute the following definition:

officer—

- (a) means, in relation to the trustees of a trust, any of those trustees; and
- (b) means, in relation to any other entity,—
 - (i) a member of the board or governing body of the entity if it has a board or governing body; or
 - (ii) in any other case, a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive); and
- (c) includes any class or classes of persons that are declared by regulations to be officers for the purposes of this Act; but
- (d) excludes any class or classes of persons that are declared by regulations not to be officers for the purposes of this Act

To omit from the definition of **parent entity** the words “, for the purposes of sections 56A to 56F,” (line 32 on page 7).

To omit from the definition of **single entity** the words “, for the purposes of sections 56A to 56F,” (line 12 on page 9).

Clauses 8 and 9

To omit these clauses (lines 23 to 33 on page 12), and substitute the following clause:

8 Commission is Crown entity

- (1) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.

Clause 10

To omit *paragraph (f)* (lines 34 and 35 on page 14), and substitute the following paragraph:

- (f) ensure that the register of charitable entities is compiled and maintained; and

To omit *paragraphs (n) and (o)* (lines 34 to 39 on page 15), and substitute the following paragraph:

- (n) carry out any other functions that the Minister may direct the Commission to perform in accordance with section 112 of the Crown Entities Act 2004.

To add, as subclause (2), (after line 39 on page 15), the following subclause:

- (2) Without limiting **subsection (1)**, the Commission may perform its functions under **subsection (1)(a) to (c), (l), and (m)** in relation to any charity regardless of whether or not the charity is registered as a charitable entity.

Clause 11

To omit this clause (lines 2 to 6 on page 16), and substitute the following clause:

11 Membership of Commission

- (1) The Commission consists of no more than 7, and no less than 5, members.
- (2) Members of the Commission are the board for the purposes of the Crown Entities Act 2004.
- (3) Despite clause 1(1) of Schedule 5 of the Crown Entities Act 2004, the Minister must appoint 1 member to be the chairperson of the board.
- (4) The Minister may appoint members under the Crown Entities Act 2004 on and after the commencement of this subsection.

Clause 12(5)(a)

To omit this paragraph (lines 14 and 15 on page 17), and substitute the following paragraph:

- (a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and

Clause 13A

To omit *subclause (1)* (lines 14 to 19 on page 20), and substitute the following subclause:

- (1) A trust is not prevented from being of a kind referred to in **section 13(1)(a)** merely because the trustees of the trust have not yet derived an amount of income in trust for charitable purposes if, in the opinion of the Commission,—
 - (a) an amount of income will be derived by the trustees in trust for charitable purposes; and
 - (b) it is fit and proper to register the trustees of the trust as a charitable entity.

To insert in the Example, after the words “for charitable purposes.” in the second place where they appear (line 29 on page 20), the words “The Commission is also of the opinion that it is fit and proper to register the trustees.”

Clause 15(2)

To insert, after *paragraph (e)* (after line 15 on page 22), the following paragraph:

- (ea) an individual who, or a body corporate that, is disqualified from being an officer of a charitable entity under **section 25(4)**:

Clause 17

To add the following subclause (after line 25 on page 24):

- (4) Despite **subsection (1)**, the Commission is not required to consider an application that has been made in breach of **section 25(4)**.

Clause 22

To omit *subclause (1)(i)* (line 18 on page 27), and substitute the following paragraph:

- (i) the terms and conditions of any exemption granted under **section 56** that is in force in relation to the entity.

To insert, after *subclause (1)* (after line 18 on page 27), the following subclause:

- (1A) The register must contain any other prescribed information or documents.

Clause 22A

To add the following subclause (after line 3 on page 28):

- (4) This section does not limit the Official Information Act 1982.

Clause 25

To add the following subclause (after line 16 on page 31):

- (4) The Commission may, if it has removed an entity from the register, make either or both of the following orders:
- (a) an order that an application for the re-registration of the entity as a charitable entity must not be made before the expiry of a specified period:
 - (b) an order disqualifying an officer of the entity from being an officer of a charitable entity for a specified period that does not exceed 5 years.

Clause 26(1)(e)

To insert, before the words “any person” (line 32 on page 32), the words “the entity has engaged in serious wrongdoing or”.

Clause 30A

To insert, after the words “the register” (line 11 on page 35), the words “and whether to make an order under **section 25(4)**”.

To add, as subclause (2) (after line 15 on page 35), the following subclause:

- (2) In considering whether to disqualify a person from being an officer of a charitable entity under **section 25(4)**, the Commission must—
- (a) observe the rules of natural justice; and
 - (b) give the person a reasonable opportunity to make submissions to the Commission on the matter.

Clause 45(2)(b)

To omit the word “acting” (line 32 on page 42), and substitute the words “who acts”.

Clause 46(2)

To omit the words “6 months” (line 25 on page 43), and substitute the words “2 years”.

Clause 46A

To omit the word “donations” (line 1 on page 44), and substitute the word “donations,”.

Clause 47(2)(a)

To insert, after the word “form” (line 25 on page 44), the words “(if any)”.

Clause 54

To omit *subclause (1)(b)* (lines 18 to 20 on page 48), and substitute the following paragraph:

- (b) dated and signed on behalf of the entity; and

To omit *subclause (3)(a)* (lines 27 to 29 on page 48), and substitute the following paragraph:

- (a) an entity may nominate a balance date for the entity—
 - (i) in the application for registration of the entity as a charitable entity; or
 - (ii) in the case of a single entity or an entity that forms part of a single entity, in the application for registration of the single entity as a charitable entity; and

To add the following subclause (after line 11 on page 49):

- (7) **Subsection (3)(b)** is subject to **subsections (5) and (6)**.

Clause 56(1)

To insert, before *paragraph (a)* (before line 13 on page 50), the following paragraph:

- (aa) **section 16**; or

Clause 56A(3)

To add the words “(if any)” (line 9 on page 51).

Clause 56B(2)

To add the words “(if any)” (line 30 on page 51).

Clause 56E(1)

To omit *paragraph (b)* (lines 3 to 5 on page 54), and substitute the following paragraphs:

- (b) the Commission is satisfied that the entity has failed to comply with a term or condition referred to in **section 56C**; or
- (c) the parent entity has sent or delivered to the Commission a request for the Commission to revoke the entity’s status as forming part of the single entity.

Clause 63

To omit *subclause (1)(a)* (lines 15 to 20 on page 58), and substitute the following paragraph:

- (a) a charitable entity, or a person in connection with a charitable entity, has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of this Act or serious wrongdoing; or

To omit *subclauses (4) and (5)* (lines 23 to 27 on page 59).

Clause 64

To omit *subclause (2)(b)(i)* (lines 5 to 9 on page 60), and substitute the following subparagraph:

- (i) the charitable entity, or a person in connection with the charitable entity, has engaged in, or is engaging in, conduct that constitutes, or may constitute, a breach of this Act or serious wrongdoing; or

To omit *subclauses (3) and (4)* (lines 1 to 5 on page 61).

Clause 64A(1)(b)(ii)

To insert, after the word “chairperson” (line 14 on page 61), the words “of the board”.

Heading to Part 3

To omit from the heading to *Part 3* the words “**relating to Commission and other miscellaneous matters**” (lines 2 and 3 on page 68), and substitute the words “**and amendments to other Acts**”.

Subpart 1 of Part 3

To omit this subpart (line 4 on page 68 to line 8 on page 92), and substitute the following subpart:

Subpart 1—Miscellaneous matters relating
to Commission

Reporting obligations

70 Reporting obligations in respect of financial year commencing on 1 July 2005

- (1) The reporting requirements and provisions that would have applied if the Crown Entities Act 2004 and the Public Finance Amendment Act 2004 had not been enacted apply to the Commission in respect of the financial year commencing on 1 July 2005, rather than the reporting requirements and provisions enacted by the Crown Entities Act 2004.
- (2) Therefore, for example, the Commission must comply, in respect of that financial year, with the requirements relating to annual financial statements, annual reports, statements of intent, and audits that were in the Public Finance Act 1989 immediately before the commencement of the Public Finance Amendment Act 2004.

- (3) For the purposes of this section, the Commission must be treated as if it were named in Schedules 4, 5, and 6 of the Public Finance Act 1989 as in force immediately before the commencement of the Public Finance Amendment Act 2004.
- (4) Despite **subsections (1) and (2)**, section 152 of the Crown Entities Act 2004 applies in respect of the financial year commencing on 1 July 2005.

Bank accounts

71 Crown Entities Act 2004 provisions concerning bank accounts apply to Commission

Despite section 195 of the Crown Entities Act 2004, the following apply to the Commission on and after the commencement of this section:

- (a) section 158 of that Act; and
- (b) every notice published in the *Gazette* for the purposes of section 158 of that Act (unless under the terms of the notice, the notice does not apply to the Commission); and
- (c) every regulation made for the purposes of section 158 of that Act (unless under the terms of the regulation, the regulation does not apply to the Commission).

Clause 139

To omit from *subclause (1)(e)* the words “any register that the Commission is required to keep under this Act” (lines 26 and 27 on page 97), and substitute the words “the register of charitable entities”.

To omit *subclause (1)(f) to (k)* (line 32 on page 97 to line 17 on page 98), and substitute the following paragraph:

- (f) declaring any class or classes of persons to be, or not to be, officers for the purposes of this Act:

To insert, after *subclause (1)* (after line 20 on page 98), the following subclause:

- (1A) Without limiting **subsection (1)(a)**, forms prescribed under this section may require the inclusion in, or attachment to, forms of information or documents for the purpose of assisting any person in the exercise of the person’s powers in connection with section KC 5 of the Income Tax Act 2004 or in the performance of the person’s functions in connection with that section (regardless of whether or not that information or documentation is collected for the purposes of this Act).

Schedules 1 to 3

To omit these schedules (line 1 on page 100 to line 23 on page 119).

Schedule 4

To insert, before the item relating to the Incorporated Societies Act 1908 (before line 4 on page 120), the following item:

Crown Entities Act 2004 (2004 No 115)

Insert in Part 2 of Schedule 1, in its appropriate alphabetical order:

Charities Commission

To omit the item relating to the Public Finance Act 1989 (lines 15 to 18 on page 120).

Explanatory note

This Supplementary Order Paper amends the Charities Bill as a consequence of the passing of the Crown Entities Act 2004. The standard governance provisions for Crown entities are now contained in that Act.

This Supplementary Order Paper also—

- changes the date on which the Charities Commission is established from the day after the date on which the Bill receives the Royal assent to 1 July 2005. Members of the Commission may be appointed after the Bill receives the Royal assent (with the appointments taking effect when the Commission is established on 1 July 2005); and
- amends the definition of **officer** to deal with charities that may not have a board or governing body. In these circumstances, an officer is a person occupying a position in the entity that allows the person to exercise significant influence over the management or administration of the entity (for example, a treasurer or a chief executive). The amended definition also allows an Order in Council to be made that includes or excludes classes of persons as officers for the purposes of the Act. This will give more flexibility to make allowances for the diversity of structures in the charitable sector; and
- clarifies that the Commission's functions in *clause 10(a) to (c), (l), and (m)* may be performed in relation to all charities including charities that are not registered; and
- requires the notification of annual meetings of the Commission to be given in daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin (rather than just in the area or region in which the meeting is held); and
- clarifies that the Commission has a discretion in relation to the registration of trustees of trusts that have not yet derived an amount of income in trust for charitable purposes (for example, newly created trusts). In addition to being satisfied that the trustees will, in the future, derive an amount of income in trust for charitable purposes, the Commission must also be satisfied that it is fit and proper to register the trustees as a charitable entity; and
- requires the register to contain the terms and conditions of any exemption granted under *clause 56* and any other prescribed information or documents; and
- clarifies that the Commission's power to prevent or restrict access to information on the register does not limit the Official Information Act 1982; and

- allows the Commission, if it has removed an entity from the register, to give an order under *clause 25* preventing the entity from re-applying for registration within a specified period and preventing an officer of the entity from being an officer of a charitable entity for a specified period not exceeding 5 years. In considering whether to make an order, the Commission must observe the rules of natural justice; and
- clarifies the intention that an entity can be removed from the register if the entity has engaged in serious wrongdoing; and
- extends the period within which proceedings for an offence under *clause 46* may be commenced from 6 months to 2 years after the matter giving rise to the offence was discovered or ought reasonably to have been discovered; and
- provides for the nomination of balance dates in relation to entities that form part of a single entity for the purposes of umbrella registration; and
- extends the exemption power in *clause 56* to allow the Commission to grant an exemption in relation to the application requirements in *clause 16*. This extension gives the Commission more flexibility when dealing with applications for registration; and
- allows a parent entity to request that the Commission revoke an entity's status as forming part of a single entity under *clause 56E* for the purposes of umbrella registration; and
- clarifies the drafting of the provisions that allow warning notices to be given, and notices to be published, if a charitable entity has engaged in conduct that constitutes, or may constitute, a breach of the Act or serious wrongdoing; and
- removes the provisions that protect the Commission from defamation proceedings in relation to warning notices and notices that publish the details of serious wrongdoing and certain other matters. These provisions are no longer considered necessary; and
- allows prescribed forms to require the inclusion of information or documents for the purposes of assisting a person in the exercising of powers or the performing of functions in connection with section KC 5 of the Income Tax Act 2004 (which relates to rebates of income tax in respect of gifts of money to charities). This information will help the Inland Revenue Department to determine whether a particular entity is of the kind to whom gifts can properly be made for the purposes of income tax rebates; and
- makes a number of other minor drafting changes.