



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

Affiliated to the International Council of Women

09 July 2010

Submission to the Charities Commission Board in response to the Notice of Intention to remove National Council of Women of New Zealand Inc from the Charities Register

Introduction

The National Council of Women of New Zealand (NCWNZ) is uniquely placed to speak on behalf of women due to its diverse membership and links to local communities. The Council represent a wide range of organisations and individual members with the common goal of promoting the needs and rights of women, children and families.

Our purpose, as stated in the Constitution of the National Council of Women of New Zealand as of November 2008, is:

Rule II Purpose:

1. *To serve women, the family and the community at the local, national and international level.*
2. *To research the needs of women and the family.*
3. *To engage in education for women, that advances the betterment of women, the family and the community.*
4. *To collect and redistribute information of service to the community.*
5. *To form a link with the National Councils of Women of other countries through the International Council of Women.*

There are many ways of achieving our purpose, so NCWNZ is active on many different fronts, such as research, education, debate, submissions, monitoring, reporting, representational advocacy and support.

Grounds for removal from the register

We have been notified that the Charities Commission is of the opinion that NCWNZ no longer qualifies for registration as a charitable entity on the grounds that it is not maintained exclusively for charitable purpose as required by section 13(1)(b) of the Act.

In order for a purpose to be charitable, it must:

- (a) Fall within one of the charitable purposes set out in section 5(1) of the Charities Act 2005; and
- (b) It must provide a public benefit

Section 5(1) of the Act defines charitable purpose as relating to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community.

The Charities Commission is of the view that the objects of NCWNZ, as set out in rule II of the constitution do not meet the above requirements.

NCWNZ strongly submits that this view is incorrect. The broad purpose “to serve women, the family and the community at the local, national and international level” is a charitable purpose that is achieved through research, discussion and action. NCWNZ maintains that our primary purpose is the advancement of women, which relates directly to the advancement of education, the relief of poverty and other purposes beneficial to the community.

The purposes of NCWNZ

NCWNZ has been serving women for over a hundred years, during which time the organisation has been involved in countless activities that have undeniably resulted in direct progress for women and their families as well as the wider public benefit of a more equal society.

The purpose, as set out in the constitution, “to serve women, the family and the community at the local, national and international level” is intended to cover all the varied activities of the Council and reaffirm the ongoing commitment to end all forms of discrimination and violence against women for the benefit of all.

This purpose advances education by assisting, supporting and empowering women to become leaders in academia, employment and public positions. NCWNZ provides valuable information and tools relating to the needs of women and disseminates this knowledge through various channels, locally, nationally and internationally.

This purpose relieves poverty by ensuring that the needs and rights of women are represented and remain a community and government priority. Inequalities are the root cause of poverty; therefore, in order to relieve poverty, it is necessary to ensure that women are represented and active in all aspects of society.

This purpose is beneficial to the community by providing research, education, debate, submissions, monitoring, reporting, representation and support.

The spirit and intent of the Statute of Elizabeth was to assist in the alleviation of suffering or provide a universal common good and although the purpose of NCWNZ is not explicitly listed in the preamble, it can be considered similar to the spirit and intent of those purposes listed.

Public Benefit

NCWNZ has been advancing the role of women in society for over a hundred years; does this not constitute a public benefit?

From the very beginning, NCWNZ was established to promote progress for all women. The interests and activities of the organisation have been varied, but this purpose has remained central throughout the years.

It is now widely recognised that progress for women is progress for all; the positive impacts of gender equality in New Zealand can be measured in both social and economic terms.

NCWNZ maintains that all programmes and activities of the Council, at local and national level, are undertaken for the benefit of the New Zealand public.

The work this organisation has done over the many years has helped to shape our society. To an extent, our ancillary advocacy work has served as a pressure gauge which our leaders have been able to take measure from. It has also acted as a safety valve by enabling New Zealand citizens to have their say. It is the function of civil society organisations to help maintain civility.

In order to convey the breadth of the work of the Council, the passion and commitment of its members and the public good achieved through its programmes and activities, NCWNZ sent a brief questionnaire to its contacts asking for their views. The responses have been compiled in a separate document and are attached to this submission. NCWNZ is of the belief that it is the opinions of these women and women's organisations that determines the true public benefit that this organisation provides and sincerely hopes that the Charities Commission Board will take their views into consideration.

Political Activity

The Charities Commission has formed the view that Rule II 1. Of NCWNZ's constitution does not come under any of the four heads of charity and is achieved through political advocacy which cannot be considered ancillary under section 5(3) of the Act.

NCWNZ does not have principal purposes, or objects, that are political, such as seeking to change the law, supporting a political party or perpetual advocacy of a particular view.

NCWNZ engages in advocacy, as well as the many other activities outlined in our initial submission, as a means of furthering or supporting our primary purpose of promoting progress for women. Therefore, advocacy is not our sole purpose but ancillary, as required under section 5(3) of the Act.

Advocacy is a crucial element in the promotion of women's empowerment because it raises public awareness of the issues and enables individuals and organisations to participate in the formation of Government policy that promotes gender equality.

As an apolitical organisation, NCWNZ does not engage in non charitable political purposes, such as the support of political parties or endorsement of those seeking political office.

NCWNZ does not exist to change the law, since gender inequality is entrenched not only in law, but in the prevailing attitudes and behaviours of a society. However, at times the Council communicates the potential benefit of changing the law if it is in the public interest to do so.

NCWNZ is involved in policy development, in part, in response to government requests for advice and input into government decision making and administration. Therefore, NCWNZ was under the impression that its contribution, in terms of advocacy and representation, was in the public interest and, in recognition of this, funded under a contract for social services.

The advocacy that NCWNZ has engaged in has been based on research and reflection, expressed through the voice of reason, and grounded in humanity. It has been an effective tool in furthering the charitable goals of NCWNZ and has allowed women in New Zealand to progress, and in many cases prosper.

NCWNZ maintains that it is not engaged in political activity as a primary purpose but that advocating for changes to law and policy is a key part of assisting its beneficiaries and therefore plays a key role in advancing its main purpose.

The intention of the Charities Act 2005

NCWNZ is concerned that the Charities Commission is taking steps to deregister this organisation due to its involvement in advocacy, despite the fact that this advocacy is in support of its charitable purposes. This was never the intention of the Charities Act 2005, and could have serious ramifications for the charitable sector.

On 8 September, 2004, Judith Tizard stated in an Address to NZ Federation of Voluntary Welfare Organisations that:

The charitable purposes test

There has been considerable discussion around the pros and cons of the charitable purposes test. The test is based on the introductory text of the Charitable Uses Act of 1601, an Act passed to protect and prevent the misuse of charitable funds. The introduction of that statute contained a list of the purposes considered charitable and therefore worthy of legal protection at that time.

While the Charitable Uses Act was repealed a long time ago, its introductory text is now well established as a part of the general law of charity and has been explained and developed through case law over the past four centuries.

Probably the most enduring development occurred in 1891 when Lord McNaghten paraphrased a summary of charitable purposes that divided the notion of charity into four 'heads': gifts for the relief of poverty, gifts for the advancement of religion, gifts for the advancement of education and gifts for other purposes beneficial to the public, not falling under any of the preceding three heads. McNaughton's simple summary has since become a generally accepted interpretation of charity and these long established heads provide the definition of charitable purpose used in the Charities Bill.

Over the years, new purposes have and can be put forward as candidates for charitable status. To be recognised as such, the purposes have to be analogous to the spirit and intent of those listed in the preamble of the Statute of Charitable Uses, or to ones already held by the courts to be charitable by analogy to those listed.

It is principally because the legal interpretation of charity is not static and needs to change as social values and attitudes evolve that the government has decided not to provide a more extensive list of charitable purposes in the Charities Bill and has, instead chosen to rely on the term's common law history for more extensive interpretation.

Advocacy and the notion of “exclusive charitable purposes”

To become registered, the Bill, as currently drafted, says organisations must have ‘exclusively’ charitable purposes. This is not new. It simply reflects the current law. No change is planned.

The term ‘exclusively’ has been interpreted by the courts to mean that, to be charitable, an organisation’s main purpose must be charitable. It is clear that if an organisation is established with a main purpose that is clearly charitable but has certain other purposes which are non-charitable, the latter will not prevent a conclusion that the organisation was established exclusively for charitable purposes. The Bill interprets ‘exclusively’ in exactly the same way.

The single biggest issue with respect to the charitable purpose test seems to be the position of advocacy. It goes without saying that charities must not be Political organisations. This being said, however, organisations are not precluded from political activity. The law makes it clear charities can undertake advocacy in support of their charitable purposes without their charitable status being affected. Once again, the Bill will continue this existing law.

It is not, nor has it ever been the government’s intention to make it harder for organisations engaged in advocacy to register with the Commission.

To an extent, the uncertainty in the sector about the terms “charitable purpose” and “exclusively” provides a good indication of how challenging and important the Commission’s education function is going to be in its initial year of operation. For the charitable sector to be able to operate to its full potential it is essential people understand their legal obligations. The establishment of the Commission will provide the vehicle for this upskilling and capacity building to occur.

Is our deregistration in the interest of the public?

We submit that there is no evidence to support an affirmative answer to this question. Indeed, it is quite the opposite. A multitude of organisations and individuals have demonstrated their concerns regarding the current situation. They have done this directly to us, or directly to the Charities Commission, to their local media and official representatives.

The National Council of Women of New Zealand is iconic. The mid to early New Zealand settlers say a need for the work it could do.

NCWNZ does not engage in illegal activities to further any cause. This body has always supported the laws of the land and has promoted such behaviour to its members and the wider public.

This organisation has never been frivolous with its income; instead the majority of revenues have always been directed at our purpose.

This organisation is populated by some of New Zealand’s best citizens, citizens who have been recognised by the Queen’s Honours for their commitment and work for the community, social services and other important areas which ensure our society thrives.

Before taking the advice of the Charities Commission to reword our Constitution, we stood for this:

Rule II Objects:

1. *To unite women for mutual counsel and co-operation, and all that makes for the good of the humanity.*
2. *To promote the spiritual, moral, civil and social welfare of the community.*
3. *To work for such conditions of life as will assure to all the opportunity for full and free development.*
4. *To work for the social, legal and economic advancement of women.*
5. *To collect and redistribute information of service to the community.*
6. *To form a link with the National Councils of Women of other countries, through the International Council of Women.*

Today, we still stand for this; it has simply been rephrased to best represent what legalities require.

And so, it is with complete due respect to the Charities Board and the role that it must play, that we challenge you, should you favour deregistration, to provide evidence which proves that it would be in the public interest to remove us.


Conclusion

In conclusion, we strongly submit that our primary purpose is the advancement of women, which relates directly to the advancement of education, the relief of poverty and other purposes beneficial to the community. The advocacy activities that NCWNZ engages in are indeed ancillary to our main purposes.

We hope that this submission, along with the other material submitted to the Charities Commission, has been able to clarify the role of NCWNZ and the important part this organisation plays in the New Zealand charitable sector.

We ask that rather than deregistering an organisation that has been working for the public benefit for over a hundred years; you provide guidance on how this organisation can better operate within the requirements of the Charities Commission.

Yours sincerely,



Elizabeth Bang
National President

Lynda Sutherland
Executive Officer