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### **Women in Stoush with Charities Commission**

Yesterday, the National Council of Women of New Zealand (NCWNZ) notified its membership that the Charities Commission office was recommending to the Charities Board deregistration of NCWNZ as a charitable organisation. This follows on from the Commission's notice of intention to deregister received in mid-April 2010.

NCWNZ was one of the few NGOs prepared to speak out publicly against the ramifications of the then proposed amendments to the Charities Act in October 2006. At the time that NCWNZ was signalling that the Act would be a backwards step and barrier to public participation, other countries were taking steps in the opposite direction to New Zealand. The Canadian Government had already established and funded a working group of voluntary sector members in 2002 to look into reforms of the charitable sector with a view to broadening the scope of advocacy by charities. By 2006, the Canadian Government had issued a paper acknowledging that little would be done via the Courts to address the problem and that it would be left to Parliament to make more comprehensive law changes.

The Charities Commission in the UK has also adopted measures which clearly advise charities of the limits and lassitude when it comes to advocacy or campaigning.

"To the best of our knowledge, we are the first NGO of our size, structure and age facing deregistration," says Elizabeth Bang, NCWNZ National President. "So, if the Charities Board follows through on what the Review and Investigation team advises, then a precedent will be set which could affect a lot of other charitable organisations in the near future."

Member bodies of the Council are not subject to this deregistration.

"We are being targeted at the upper most level, our officers and national office," says Elizabeth Bang. "Few organisations can operate effectively when their head is severed."

NCWNZ submitted to the Charities Commission process and issued a submission, including evidence of its activities, at the end of May. At that time the review was focussed on the law; legal interpretation only.

"On the surface of it, we thought we would be fine," says Elizabeth Bang. "The majority of advocacy work undertaken is, we felt, representational advocacy. We operate consultation within our membership, we research past submissions and policy, we research what information is out in the public domain, and our officers talk to the experts. We then write our submissions."

NCWNZ is currently partially funded under a government contract to provide advocacy and representation as one of four core functions under the service description. This activity includes regular political lobbying, yet is recognised by the funding government agency as a legitimate means of communicating changes, or continuance of government policy in areas vital to social well-being.

“We are in a catch-22 situation,” says Elizabeth Bang. “One side of government contracts us to advocate, while the other side seeks to punish us for this. We have had 114 years to develop our reputation as a well-reasoned, voice for ordinary people. We are able to provide gender analysis on policy where it has too often been absent, and as a body we are one of the most prolific submitters in the country. The whole time that we have been doing this, we have remained apolitical.”

The Charities Commission office advised that no further information would be considered or accepted. NCWNZ has made a request to the Charities Board that it be open to receiving further evidence from the Council.

“We would like the opportunity to defend ourselves,” says Elizabeth Bang. “We prepared our submission based on the body which would be examining it and the advice this body gave. They wanted case-law and the likes.”

NCWNZ has to prove that it is in the “public interest” that it be able to continue operating as a charitable organisation. It also needs to prove that its work is of “benefit to the community”.

According to the *House of Lords*:

*A Trust for... political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is not a charitable gift.*

“The Court, or legal interpretation, is not able to determine whether political advocacy works for the benefit of the community or is in the public interest,” says Elizabeth Bang. “Yet, the advice received by the Charities Commission office to its Board considers only the legalities; it readily acknowledges that it cannot make a value-judgment.”

NCWNZ contends that the Charities commission needs to address this anomaly, otherwise the Board is operating from a position where the argument for deregistration is always weighted against the charitable organisation concerned.

“Yes, the Commission needs to consider the law, but it should also have an assessment team which can provide some analysis of the value of the work done and who has benefitted from it,” says Elizabeth Bang. “And if it won’t do that, then it needs to let organisations submit evidence directly to the Board.”

“We have a documented history. Where the Courts feel there is no evidence to guide them on whether a law change has been effective or not, we feel pretty confident that the evidence of such resides in our history and current work today,” says Elizabeth Bang. “We have touched the lives of people for 114-year.”

For more information visit: <http://ncwnz.org.nz/ncwnz-and-the-charities-commission/>

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*"Women Influencing Policy"*

## **Background Notes**

### **What was involved in the deregistration process:**

To date what has transpired, is as follows:

On 16 April 2010, NCWNZ received notification from the Charities Commission Office of its intention to deregister the National Council of Women of New Zealand Inc as a charitable organisation. The Board immediately notified the Honorary Solicitor, Brenda Cuttress, of this development. The Board also activated our national office to facilitate a meeting between the Manager of the Review and Investigation team, as well as the analyst tasked with assessing NCWNZ. This meeting took place on Friday 14 May 2010 at the Charities Commission office. The Minister responsible for the Charities Commission, Hon Tariana Turia, was notified of this development. The Minister indicated that she was supportive of NCWNZ but not able to interfere in the operations of this agency.

An initial submission was prepared for the Review and Investigation team; this was presented on 14 May 2010. NCWNZ accepted the Charities Commission offer for an extension for the main submission to its office which focused on the legal aspect of this matter and required evidence relating to NCWNZ's activities. This submission was presented on 31 May. Further evidence, over one hundred pages of the work undertaken by national office, was submitted on 2 June 2010. This material is available on the NCWNZ website.

On 22 June it was confirmed that the Review and Investigation team would be recommending that NCWNZ is deregistered as a charitable organisation. NCWNZ responded immediately with a request to provide the Commission with information and evidence relevant to the Board specifically. The commission has thus far not responded.

On the same day, NCWNZ national office met with Dave Henderson of ANGOA. The purpose of this meeting was to alert the Community/Voluntary Sector of what was happening to the National Council of Women at the national level, including its elected officers. Also on the agenda was discussion about the implications for other Umbrella Organisations which amongst other work, engage in the Charities Commission definition of "political activity". Several of the Umbrella Organisations attached to ANGOA are contracted to perform a similar function to NCWNZ in regards to the Ministry of Social Development funding contract. NCWNZ is concerned for these organisations, but also concerned that such organisations will cease to have a "voice" considering what is at stake.

### **What we said in 2006:**

#### ***Press release: Commission out of step***

The National Council of Women of New Zealand (NCWNZ) is deeply concerned that the mechanisms by which organisations carry out charitable purposes, i.e. the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community, will be used as the basis for deregistering organisations which currently enjoy charitable status.

In the lead up to the establishment of the Charities Commissions, NCWNZ indicated to the Select Committee and Ministry of Economic Development via the submission process that the role of advocacy was a critical function for many groups in achieving the Commission's designated charitable purposes. Frequently, advocacy work is at the forefront of acting upon society's interests and needs, and without this policy advice, any government will be less aware of the people's needs and less able to deliver on those needs.

"Had groups not advocated at a political level for social change then women would never have gained the right to vote, our children would have never had rights of protection under labour law, access and opportunities for the disabled would still be denied, and human rights would be something they had overseas," said Christine Low, NCWNZ National President. "The list of

social change that has created our social fabric, our civil society, our cohesion goes on ad infinitum."

"Groundswell at the community/societal level, often focused by social justice groups has been a critical service for government and other decision-makers. These groups have earned their charitable status through long hours of unpaid work, dedicating their efforts for the betterment of the wider community," said Christine Low. "In the case of NCWNZ, our constitution binds our members to promote the spiritual, moral, civil and social welfare of the community, and all that makes for the good of the humanity - the actions that we must take to bring these objects about does and will continue to involve political activity."

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"The Charities Act 2005 already contains adequate provisions for excluding or deregistering organisations - the Act should not now be open to reinterpretation, which targets groups engaging at the political level, nor subjective quantification of what is too much political activity," said Christine Low. "If the Act is to be reinterpreted then it needs to be reopened for public consultation. This should include defining "advocacy", which NCWNZ called for from the outset. It should also include understanding that advocacy is defined as "support for, esp. of a cause", which often intrinsically flows into the Charities Commission's charitable purposes. The amount or degree of political engagement should not be used as a mechanism for selective exclusion, particularly as the message it sends to all groups is very counter-productive and destabilising."

The loss of charitable status has serious implications for organisations dependent on funding from philanthropic bodies. In some cases organisations would no longer be able to meet funding application eligibility; in other cases, the road to secure funding would be extremely rocky. Funding for NGOs is already extremely competitive, charitable status is one of the most basic requirements of any Not-for-Profit organisation.

#### **How it works in the UK:**

[www.charitycommission.gov.uk/publications/cc9.asp](http://www.charitycommission.gov.uk/publications/cc9.asp)

#### **Steps that Canada has taken:**

<http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0590-e.htm>

#### **Definition of Representational Advocacy used in government contract**

##### ***Advocacy and Representation***

Advocacy and representation is an aspect of the work of Umbrella Organisations which ensures the community and voluntary sector (and the people they serve) has a voice in society and in local and national government:

**Public and media advocacy** – Provide public representation and advocacy via the media such as:

- Media releases and promotional campaigns improving public awareness of the needs and work of the sector
- Notices in publications promoting accessible effective, culturally appropriate and relevant social services
- Promoting the role of citizen participation in the voluntary sector through various public forums/publications/advertisements

- Identifying opportunities and liaison with media regarding positive, good news, public interest stories that promote the activities of the sector
- Campaigning for improved funding to assist people needing services

**Representation at national and local body level** – providing informed and knowledgeable advice and advocacy services to local and national government or government agencies based on first hand, active involvement in the sector.

Representing the interests of the sector will involve any of the following:

- Represent the community and voluntary sector views, interests and vision at the national level to critique and advocate for strategies to assist members of society in need
- Encourage cooperation between Community Agencies and government departments by building relationships with government officials
- Assist local authorities to engage with the sector in identifying priorities for promoting social well-being and developing effective approaches to achieve community outcomes and social cohesion
- Provide an opportunity for local and national government to have input into issues arising in the sector
- Make submissions to select committees, national committees and government agencies as appropriate
- Provide a point of knowledge of the capacity of NGOs in the sector, including service coverage and development issues
- Research social policy issues thereby providing a solid basis for advocating for funding for strategies and programmes to address need
- Provide information to social service agencies within the government sector

**Contribute to Policy Development** – Provide policy development input including for example:

- Acting as a point of liaison between the community and voluntary sector and government agencies in the formation of government policies and legislation
- Identifying or creating opportunities for the community and voluntary sector to participate in policy, legislative and sector development
- Identifying any policies or legislation that may hinder the development of community agencies
- Providing policy advice that reflects the views, interests and vision of Community Agencies at national and local body level and leads to policy action, social change and community empowerment
- Advocating on behalf of the sector to address any government policies and practices that create disincentives to potential community sector volunteers
- Translating experiences of workers in the sector to a policy setting

### **The Implications for this organisation**

The loss of charitable status has serious implications for organisations dependent on funding from philanthropic bodies. The current funding environment is already extremely competitive, making charitable status one of the most basic requirements of any charitable organisation.

The loss of charitable status will have implications and ramifications for NCWNZ members at both the organisational and individual levels. It will also have ramification for women, children and families.